CEPS SPECIAL REPORT
Thinking ahead for Europe

Access Barriers to Services Markets

Mapping, tracing, understanding and measuring

Federica Mustilli and Jacques Pelkmans

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Abstract

EU and national policy-makers argue that the single services market is a key to EU growth, but that many barriers to services market access remain. Grasping the scope, nature and economic meaning of these barriers, however, has proven rather difficult. This is exactly what the present CEPS Special Report helps the reader to do. We trace all market access barriers in services, as far as the data allow, and attempt to understand their nature and economic meaning (given that they are usually forms of domestic regulation) and discuss aspects of the measurement of restrictiveness. We make a sharp distinction between market access barriers restrictions in a non-EU WTO/GATS environment and intra-EU ones, and demonstrate the significant difference in ambition between the two. The paper specifies in detail the progress made by the EU's horizontal reform in services markets, documenting the removal of many cross-border obstacles to trade in services and establishment. Finally, following these conceptual and descriptive analyses, a brief assessment of access restrictiveness indices is provided for both the non-EU WTO environment and for intra-EU services access barriers.

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Access Barriers to Services Markets: Mapping, tracing, understanding and measuring

Federica Mustilli and Jacques Pelkmans*

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1. Purpose and structure

When empirically verifying the determinants of international exchange in services and the impact on productivity (growth), it is crucial to have a good idea of the nature, variation and intensity of the barriers to market access. This paper attempts to map such barriers, to trace them, especially in the EU, to understand their nature and economic meaning and to discuss measurement issues. None of these four aspects turns out to be easy. We hope that the paper can facilitate a better understanding of the manifold barriers to services exchange – drawing a sharp distinction between those barriers in the non-EU WTO environment and intra-EU barriers today – as well as identify in some detail and assess the remaining barriers in the EU's internal market for services. A brief discussion of efforts to quantify access barriers to services markets is included as well.

The structure of this CEPS Special Report is as follows. Section 2 reminds the reader of some basic preliminaries of any analysis on services barriers: i) the four modes of services exchange over borders and how they relate to one another; ii) services barriers as the consequence of domestic 'regulation' and hence how 'barriers' have everything to do with the (economic) justification of 'why regulate?'; and iii) extending this crucial point, identifying the 'roots' of services barriers, distinguishing the EU from the GATS (General Agreement on Trade in Services). Section 3 discusses the issue of the (right?) classification of services barriers, of course again distinguishing between international and intra-EU approaches. We show that there are several ways to classify barriers horizontally, but it is also important to zoom in on sectoral barriers, which can imply an incredible refinement of the analysis (we show this with an example of international restrictions of airline services). Assuming that the reader has a solid grasp of the internal market logic of the EU,[1] we refrain from further reminders on this topic in section 4 and provide an in-depth analysis of the EU's horizontal services Directive 2006/123 (sometimes called the Bolkestein Directive). Although the core of this horizontal directive is a mere codification of CJEU case law on services, its interesting implementation process has eliminated or constrained a large number of national regulatory instruments hindering cross-border services trade or restricting, and perhaps even blocking, establishment of foreign (but EU) services providers. Section 5 gives an overview of the

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* Federica Mustilli and Jacques Pelkmans are Researcher and Senior Fellow, respectively, in the Regulatory Affairs research unit at CEPS. This study draws on the findings of the SERVICEGAP FP7 project, in which CEPS participated as a principal partner. The project carried out a comprehensive investigation into the impact of market services on aggregate economic growth in the EU and its comparative performance relative to competitor regions. For more information on SERVICEGAP and its findings, see its website (www.servicegap.org).

[1] We refer to two compact surveys. For design and development of the EU single market, including the internal market logic, see Pelkmans (2011a) and for the economic impact literature on it, see Pelkmans (2011b).

entire EU regulatory regime in services, that is, not only activities falling under the services Directive but also six regulated domains (such as financial services, transport, etc.), without going into excessive detail. We identify what barriers remain in these sectors. In section 6, we survey four indices of services barriers restrictiveness (including one on regulatory heterogeneity) and related approaches for assessing, if not quantifying, the impact on trade and foreign direct investment (FDI) and possibly economic welfare. To keep the paper manageable, the focus will be on the indices (including an annex) and what they can and cannot tell us, especially inside the EU. Section 7 concludes.

2. Preliminaries when analysing services barriers

2.1 On the modes of services exchange

Services are different from goods and cross-border services exchange is very different from cross-border trade in goods. Any attempt to understand barriers to services exchange across borders begins here. It is so crucial because the barriers to services exchange need not necessarily be distinct from those in goods,[2] but their relevance and economic meaning may differ a lot. These distinctions have profound implications for both a qualitative and quantitative economic comprehension of services barriers.

Whereas almost all goods are tradable, services can be tradable or non-tradable by their nature. Whereas – in official WTO parlance – 'trade in goods' is typically separated from other ways of serving foreign market X, such as licensing a local company or local production via direct investment, in services (four) different modes of serving a foreign market are considered together in the GATS. This is equally true in the Treaty on the Functioning of the European Union (TFEU), ever since the 1957 Treaty of Rome. Thus, the EU distinguishes three modes of cross-border trade in services: i) pure trade at a distance, nowadays mainly via e-commerce or other electronic means; ii) consumer crosses the border and iii) supplier crosses the border (for temporary service provision).[3] The fourth EU mode consists of cross-border direct investment based on the 'right of establishment', which translates in the GATS as the mode of 'commercial presence'. This FDI mode should normally be a lasting form of service provision as it involves a considerable equity/ownership stake.

For services, FDI (or 'commercial presence') for local provision of services is frequently the only viable way to do business across borders. This is certainly correct for all services that have to be consumed and produced at the same time *and* that require close and repeated interaction with clients. There is a borderline here with the temporary provision of cross-border services (e.g. consultancy or architectural services but also renovation of houses or premises). Put differently, there are only a few categories of services that can be supplied to non-incidental clients from a distance.[4] Moreover, many services and, in particular more sophisticated or highly-skilled services, require a good deal of trust on the part of clients and this in turn may well be based on a credible commitment of the supplier expressed in local presence via FDI (and local staff). The implication is straightforward: official terms of market access cannot fully explain whether the entry into a given market will work, even for services providers that have been successful elsewhere. Earning trust is elusive, often localised, but

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[2] Other than tariffs, of course. Only a few barriers to services exchange are unique to services.

[3] In the GATS, this is called the 'movement of natural persons' for the provision of services.

[4] The reader should also note that when a service is inherently non-tradable, it is nevertheless quite possible to opt for the FDI mode of delivery in a foreign market (this dichotomy does not exist in goods).

nevertheless a very real issue. Whereas in goods, the issue is merely likely to consist of catering to the preferences of local clients, market penetration for many services may be far more difficult. Nevertheless, such difficulties need not be due to 'barriers'.

Another implication of these elementary aspects is often ignored: in statistics,[5] policy debates (e.g. on the draft EU services Directive, now enacted as Dir. 2006/123) and empirical economic approaches, there is a stubborn inclination to focus on cross-border 'trade' (flows, in the sense of the three modes), thereby *neglecting the FDI mode for local provision*. Since the latter mode of provision often comes more natural to services (as compared to goods), there is little doubt that neglecting this mode is a serious omission. Moreover, as Kox & Nordås (2007) have shown empirically, barriers can have an effect on more than one mode and modes can be substitutes and/or complements. Finally, the local provision of services from foreign affiliates is almost certainly far more important economically than cross-border trade.[6]

2.2 Understanding barriers means understanding domestic regulation

Services markets may suffer from a host of market failures. Therefore, many services are regulated. Services markets may also be regulated for social reasons or with a view to throttle competition. In the world economy more generally, this kind of regulation is typically domestic. There is very little international regulation; at best, there may be basic principles or broad agreement *not* to intervene in certain ways, which originate from international institutions (as in the GATS). In GATS negotiations, these general principles are complemented by specific (market access) 'commitments' per WTO country. In the EU, however, this is very different indeed. Insofar as services are regulated, they tend to be regulated at two levels of government: the EU level and the national level, sometimes regional and local, too. What is important to the EU situation and markedly different from worldwide exchange in services is that free movement and free FDI (establishment) in services across intra-EU borders is guaranteed, with a supranational enforcement regime implemented by the European Commission and the Court of Justice of the European Union (CJEU). Also, EU competition policy plays a significant role. This combination of intra-EU 'free exchange', EU regulation and EU competition policy yields a market environment that is radically distinct from worldwide exchange. And yet, there are still barriers in the EU services markets, albeit far less than (say) a decade ago, let alone two decades ago. Further progress in breaking down barriers inside the EU services markets is expected from the developments around the services Directive and ongoing initiatives (e.g. the Digital Agenda, etc.).

A word on market failures, which prompt regulation. There are basically four types of 'market failures', three of which apply to services: internalities, imperfections of competition (including forms of market power), externalities and public goods. Public goods are inapplicable, unless one wishes to go so far as to say that 'knowledge creation' is a highly-skilled service with public goods characteristics requiring regulation (or subsidies).

Table 1 gives a (non-exhaustive) overview of market failures in services, some of the best known features and frequently used remedies. Since there are no tariffs or indeed no

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[5] FATS (local service provision by foreign affiliates) statistics have received more attention recently, but the quality of FATS are still problematic.

[6] Francois & Hoekman (2010, p. 655) cite estimates that, in 2005, sales of services by US foreign affiliates ($530 billion) were almost 50% larger than cross-border services exports ($360 billion). For the EU, Peter Smith, in his PhD dissertation at Leuven University (KUL), has found similar indications, with perhaps an even larger ratio.

border measures *stricto sensu* applying to services, the remedies in Table 1 are likely to be on the basis of 'barriers to services exchange' across borders

Table 1. Overview of market failures in services

Market failures	**Features**	**Frequently used remedies**
Internalities	(Severe) Asymmetries of information Moral hazard Adverse selection	- Market-based guarantees and transparency - Credible signalling via collective action of specialised providers (self-regulation) - Self-regulation, based on framework laws - Regulation, setting minimum standards for companies and/or individuals (e.g. diplomas and licensing) - Technical regulation (e.g. taxi meters) - Conduct rules (offsetting imperfectly observable information; non-repetitive) - Self-regulation and regulation to ensure 'quality' - Conduct and structure rules, plus independent supervision
Imperfections of competition/market power	Barriers to entry Barriers to market access (for foreigners) intangibles No/incomplete competition policy	- Due to regulation and self-regulation (if ill-designed) - Due to discrimination (denial of 'national treatment') - Entry barriers may be intangible in that 'switching costs' between old and new providers can be near-prohibitive, if 'experience' and tradition correlates strongly with 'trust' - Effective anti-trust law and enforcement
Externalities	Via goods delivery bank runs or contagion via interlinkages between financial services providers (positive/negative) network externalities Intra-firm skill enhancement (education)	- Logistics/transport regulation - Systemic risk (financial stability) regulation and supervision [and funds for 'bank resolution'] - Network industries regulation (gas/electricity, broadcasting, telecoms/internet, air and rail) - Preventing failure of collective action (e.g. poaching) via (self-) regulation (usually in sectors)

All these remedies for market failures are, at the same time, in international terms 'beyond the border' measures. Only in the EU can the remedies be found at two levels of government: if at EU level, this might mean that no barriers remain between EU countries, or, at times, fewer barriers remain. In actual practice, EU member states retain considerable

discretion in services regulation and supervision, and further centralisation has proven to be sensitive. At times, subsidiarity suggests that local diversity can justify national regulation to be kept so as to cater for local preferences.

If regulation is properly designed and justified by market failures, it cannot be argued that objectionable 'barriers' to services exchange have emerged. Even if one might legally define them as 'barriers', they are justified by the overcoming of market failures. This is recognised both in EU and GATS law. And one crucial element of being 'properly designed' is undoubtedly whether or not such measures are specified in a *non-discriminatory* manner: discrimination of foreign providers may be prompted by a lack of competitiveness but is surely not justified by market failures. Non-discriminatory measures in services can nevertheless render market access onerous, if not quasi-impossible, in a number of more or less ingenious ways. In the EU, this tends to be minimised by the application of the proportionality principle; in GATS by asking for the 'least-restrictive' way of intervening. Still, the two should not be seen as more or less equivalent: the EU imposes 'free movement' of services across intra-EU borders as well as the (company's) 'right of establishment' as fundamental *rights* for any EU economic agent, whereas the GATS merely assesses, or at least *can* assess in panels and the Appellate Body, whether the barrier is the least-restrictive one, yet *without* the right of having market access (as in the EU). Many barriers that are unlikely ever to be challenged in the GATS would not survive inside the EU.

Moreover, the EU (again, unlike the GATS) has pursued extensive 'harmonisation', that is, EU regulation overcoming market failures, thereby taking away the justification of member states to insist on national regulation in this respect. Hence, insofar as EU regulation deals with these aspects sufficiently in detail, no intra-EU barriers can arise. Finally, even if intra-EU barriers to services exchange might linger despite free movement/establishment and despite common regulation, there is supranational enforcement via the Commission as the 'guardian of the treaty' and, ultimately, by the CJEU. It goes without saying that, irrespective of the quality of analysis and the authority of the Appellate Body, the CJEU is incomparably more powerful to remove lingering but unjustified barriers to services.

Last but not least, barriers to services exchange might also arise from market power as implied by Table 1. The remedy is to go for an effective national competition policy. Once again, in the EU that is very different from the GATS. The EU has a fairly tough EU-level competition policy, with a wide scope, plus rather similar national competition policies. Neither of the two exists, even embryonically, in the GATS, although, of course, some WTO partners do enjoy national competition policies on their own initiative which might help to reduce market power as a barrier to market access. Since the so-called 'Singapore issues' (including basic principles for national competition policies of WTO members) have been banned from the Doha Round, the only embryonic beginning of international competition policy can be found in some bilateral trade agreements. For all practical purposes, therefore, only the EU can remove barriers to (intra-EU) services exchange arising from (nationally held) market power.

2.3 The roots of barriers to services exchange

Barriers to services exchange, whether cross-border services trade or FDI (establishment), are mainly rooted in regulatory costs for a foreign business to access a (national) market. In some cases, market power (hence, insufficient competition policy) may cause a barrier, but in actual practice this market power usually emerges or is retained due to the regulatory environment (e.g. in network industries or exclusionary privileges in distribution). Hence, the market might

not be contestable for either domestic or foreign entrants. Strong market power in liberalised sectors without any regulatory protection is rare and we shall ignore it for present purposes.

Services barriers typically consist of 'behind-the-border' regulatory measures, and most of such measures are 'non-price' in character. In the few cases where minimum prices would be imposed but the market is otherwise 'open', there is the possibility of throttling import competition or discouraging FDI (as the incentives to compete locally e.g. on price might be lost). Other cases of price regulation might include regulated prices for public transport for reasons of income (re)distribution and/or to control input prices of other sectors using the service as an input (hence, to protect competitiveness), as well as price regulation by national regulators in some network industries – usually at the retail level – to protect consumers from excessive market power. When prices are regulated, it becomes extremely difficult to generalise about the 'justification' of such measures. Once again, the EU stands out as special: price regulation in services that affects, actually or potentially, intra-EU cross-border trade are forbidden except in network industries[7] and possibly in specific instances of some professional services. The reason is that price regulation for not-purely-local services would violate 'free movement'. In the GATS or otherwise, there are no disciplines in this respect and countries are free to impose price regulation if they so choose.

It is quite another matter, however, whether that is sound regulatory policy. In terms of 'Better Regulation' principles and e.g. OECD Guidelines, there are usually better alternative ways to address the underlying problem, without throttling or distorting market incentives. Where countries have modernised regulation and wish to promote more market-driven policies, without giving up societal objectives, one will observe that such types of regulation are typically reduced over time, and, by implication, the barriers to services exchange. The OECD PMR indicators available since 1998 show this phenomenon clearly.[8]

The vast majority of services barriers are barriers caused by (non-price) domestic regulation. These can be discriminatory (to foreign services suppliers) or not, and they can be 'justified' by market failures or not (hence, 'protectionist'). However, *even when* justified by market failures, countries might nonetheless do this in different ways and this 'regulatory heterogeneity' in itself generates costs of market access, and hence, barriers. Table 2 attempts to clarify this taxonomy. As the table shows, there are distinct roots to 'barriers'. Hence, removing barriers will require distinct strategies with different requirements. The third column is about protecting incumbent domestic service suppliers against new entrants, without a justification in terms of SHEIC (market failures endangering Safety, Health, Environment, Investor and Consumer protection). This is called 'arbitrary' in WTO and EU treaty language. The new entrants may be foreign or domestic or both. If regulation excludes foreign business or raises their cost of access in ways that do not apply to local new entrants or incumbents, it is discriminatory, which is strictly forbidden in the EU and strongly discouraged in GATS (via the 'national treatment' commitment). Even if non-discriminatory, incumbents frequently are arbitrarily protected against the threat of new entry, by banning it or making it (much?) more costly for the latter. When countries pursue or maintain such arbitrary anti-competitive regulation, one cannot reasonably expect that they will be interested in 'equivalence' with similar anti-competitive regulation in other countries. Such an interest is inherently associated with policy intentions to open up markets in a two-way fashion.

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[7] Or, more generally, in so-called SGEIs (Services of General Economic Interest, Art. 106/2, TFEU). Most SGEIs are network industries, but not always. The CJEU has for example protected the restrictive Finnish gambling regulation (against gambling addiction) as an SGEI.

[8] See the survey in Woelfl et al. (2009) as well as in Arnold et al. (2011). See also section 6.

Therefore, the right-middle entry in Table 2 is purely theoretical. Once all countries would strive for ‘equivalence’ in regulation, (the barriers from) ‘regulatory heterogeneity’ would be significantly reduced. What would remain, as long as ‘harmonisation’ is avoided or impossible, would be the inevitable costs for market access, justified by the overcoming of market failures. We shall return to ‘regulatory heterogeneity’ in section 6.

Table 2. When does (non-price) domestic service regulation cause barriers?

	Justified by market failures	**Not justified (arbitrary)**
Discriminating against foreign entrants	BARRIER to services exchange; note, discrimination itself is not justified	BARRIER to services exchange Plain protectionism
Non-discriminatory	NO barrier, if (and only if) all countries enact / maintain equivalent regulation, via harmonisation or voluntary adherence to agreed (world or EU) standards	BARRIER, *even if* all countries enact/maintain equivalent regulation (which seems implausible anyway)
Non-discriminatory, but with **‘regulatory heterogeneity**’ between countries	BARRIER, due to the lack of harmonisation or of reference to agreed standards	BARRIER (arbitrary + non-equivalence)

The second column assumes regulation to be justified by the overcoming of widely recognised market failures (SHEIC). For regulation of market structure or conduct to be in the public interest, it ought to be SHEIC-based and means other than regulation should ideally be employed to pursue other goals (e.g. redistribution). This column shows how demanding barrier-free services exchange really is. If SHEIC-based regulation is properly designed, that is, geared solely to the SHEIC *objectives*, because only they matter for overcoming market failures, there is no place for discrimination of foreigners – after all, they would be subject to the same regulation protecting SHEIC objectives. Thus, the upper-left entry is due to ill-designed regulation and removing barriers would begin by taking out discrimination. If SHEIC-based regulation is non-discriminatory, however, a mere necessary condition is fulfilled for eliminating barriers. It is not sufficient. Although there may be some convergence about what SHEIC would mean in actual practice, it does not follow that, a priori, SHEIC objectives are genuinely equivalent. If objectives differ, one must expect the impact of regulatory instruments on foreign new entrants interested to access different markets to be different for every new market. This means that the fixed costs of market access for each and every national market are positive, and possibly significant. Reducing such natural ‘regulatory heterogeneity’ would imply a voluntary convergence of objectives, such that ‘equivalence’ would be recognised, or, more ambitiously, that forms of legally binding harmonisation of objectives is undertaken.

In the WTO, harmonisation of objectives of services regulation is absent (seen as far too intrusive for ‘sovereign’ countries), although weak attempts in this direction have been undertaken in the areas of financial services and telecoms services on a voluntary basis. However, there is more. In relatively heavily regulated services sectors, the methods chosen and the instruments selected for pursuing the objectives also matter a lot. Thus, *even if* there would be a significant degree of regulatory convergence with respect to objectives, all justified by SHEIC, the panoply of instruments and the methods employed might nevertheless differ time and again between countries, with the result that market access will entail non-trivial and fixed access costs for each and every national target market. Inside the EU,

common regulation (harmonisation) is an accepted practice and this offers much greater opportunities to reduce or minimise regulatory heterogeneity of justified national services regulation.

Nevertheless, the lesson from many years of services regulation in the Union is that EU member states (and even regions) retain considerable discretion in services regulation, implementation and enforcement, even in the presence of an appreciable amount of common regulation. And where national regulatory agencies (e.g. in network industries) or supervision are relevant, it remains extremely difficult to render all of it consistent throughout the EU and equivalent for business. The Services Directive 2006/123 has undoubtedly reduced regulatory heterogeneity somewhat in the domains with relatively light regulatory requirements (see section 4). In more heavily regulated services sectors like financial services, network sectors and professional services, there are still many signals that regulatory heterogeneity is rather high, and hence, an obstacle to market access. Nevertheless, one should not forget that the EU does not only dispose of common services regulation, but also of highly intrusive 'free movement/establishment' (actively protected by CJEU judicial review) and EU competition policy. *None* of the three applies internationally. This can only mean that, despite a tendency in many parts of the world to attempt 'better regulation' focused on SHEIC objectives and to avoid arbitrary services regulation, regulatory heterogeneity is bound to remain a major problem for GATS-based market access.

3. Classification of services barriers in the world economy

3.1 Distinguishing between intra-EU barriers and world services barriers

Although the literature comprises several attempts to classify 'barriers' to services exchange, the complexity and detail of the many measures, often in the form of domestic regulation, have so far inhibited the convergence towards a unique classification.[9] The main reason for this is that 'behind-the-border' measures of domestic regulation, procedures (including red tape) and other aspects such as taxation are characterised by a virtually infinite variation in instruments, intensity and degrees of (un)certainty (given administrative discretion). This enormous complexity also implies a firm warning that quantitative economic studies of services barriers and the impact of their removal amount to a truly heroic exercise (see sections 6 and 7) because one is forced to employ methods and simplifications that cannot possibly do justice to the business reality of these barriers.

A crucial distinction ought to be made between services barriers among WTO trading partners[10] and barriers inside the EU (or the EEA).[11] The EU internal market consists of fundamental obligations for member states, hence 'rights' for companies and other economic agents. These do not exist internationally. Critical here are 'free movement of services' (unless explicitly derogated, with justification) and the 'right of establishment' (with almost no derogations). GATS language might here and there give the impression that its text seems inspired by the EU and broader (GATT-type) principles (including 'non-discrimination',

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[9] Important recent contributions include Francois & Hoekman (2010) and WTO (2012).

[10] In this paper we ignore non-WTO countries.

[11] The EU-Switzerland bilaterals (some 140 agreements) are largely about services (but very little about some financial services). These bilaterals should mimic the EEA, but in actual practice, they fall short of the EEA. The special case of Switzerland will not be elaborated here. For details on the EEA of today and the link with Switzerland, see Pelkmans & Böhler (2013).

equivalence, national treatment) but the crux of the matter is what 'commitments' have been written in the GATS schedules. The commitments in GATS hardly approximate those in the EU. Moreover, the EU's powerful, often horizontal principles are carefully monitored as to their application (or infringement), complaints are relatively easy to file,[12] the European Commission often initiates infringement procedures as the 'guardian of the treaty' and the supreme CJEU exercises judicial review, at times with sanctions.[13] None of these elements would find a counterpart at the GATS level.

In the EU of today, free movement and establishment have prompted far-reaching common regulation (and supervision as well) in several large services sectors, again without any parallel at the GATS level, and indeed without parallel in all bilateral or plurilateral free trade agreements (FTAs) in the world. Yet another crucial difference with the GATS is the EU (supranational) case law on services exchange in the internal market which is enormous and very subtle.[14] As an illustration, an authoritative survey of the EU case law on services (Hatzopoulos & Do, 2006) of a period of only five years (from 2000 to 2005) dealt with some 150 judgments of the CJEU! One explanation of this intense recourse to the CJEU at the time was the lack of political initiative in Brussels on horizontal regulation of services until around 2004. Meanwhile, the horizontal services Directive 2006/123 has come into force and this has considerably tightened the discipline on member states' exceptions to free movement and establishment. We shall summarise the essentials of this horizontal directive in section 4 and hope to clarify (in sections 4 and 5) what the (remaining) scope is for restrictions of services trade in the single market as well as for restricting FDI in services in other member states.

Many restrictions that are forbidden in the EU remain possible under GATS due to a lack of national commitments in the GATS schedules. And the many preferential trade agreements (PTAs) hardly change that. From a number of surveys on bilateral/regional FTAs in the world (see e.g. Mattoo & Sauve, 2008), it has become clear that few such regional trading agreements go (much) beyond GATS commitments. In summarising the literature, Dee (2009) notes that "…in many dimensions PTAs are not as liberal on average as WTO agreements. This is in part because some PTAs have no substantive services provisions at all – only a minority of the agreements between developing countries have such provisions. It is also because many PTAs are silent on issues like domestic regulation, monopolies, private business practices, safeguards and subsidies….But on the two core issues of market access and national treatment, PTAs are now more liberal on average than the WTO… largely because of ….disciplines on a negative rather than a positive list basis" (p. 4). Heydon & Woolcock (2009), in their careful analysis, warn against the term 'GATS-plus' as being difficult to apply, but broadly perceive a trend of PTAs getting a little more inclusive with respect to services, but with many reservations and exceptions.

Therefore, we shall structure this section as follows. First, several economic classifications of services barriers in the world will be provided, based on available literature (section 3.2). Two illustrations of sectoral restrictions will be provided in much greater detail

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[12] In services some 880 complaints were registered by the Commission in 2010, for example. This is an estimate from Table 1.1.A in SEC(2011) 1094 of 29 September 2011, p. 5 by adding complaints to the DGs internal market and services, mobility and transport, information society and media, education and culture and health and consumers.

[13] In Pelkmans & Correia de Brito (2012), an empirical survey is provided of a range of other EU enforcement instruments that have significantly improved compliance in terms of speed and lower enforcement costs both for business and citizens.

[14] For an authoritative and very detailed survey of CJEU services case law, see Hatzopoulos (2012).

(3.3) (namely, banking and air transport) and, in turn, one of these (air transport) will be further disaggregated in order to illustrate the enormous finesse of services regulation and procedures (3.4 and Annex 1).

3.2 An economic classification of barriers to services exchange

In (GATS) mode 1, services are provided over borders at a distance and, for all practical purposes, this is (normally) not requiring a movement of factors of production across borders. In all other modes, either the provider or a temporary worker (who provides/executes the service) moves, or the consumer moves, or the provider enters the market with a view to establish a subsidiary supplying local services. In other words, except for pure trade, persons move (and this may be hindered by visa, diploma issues, etc.), workers from a service provider move (and this may be hindered by a range of administrative requirements and subjected to additional costs) or companies (with capital in various forms) move, and often persons in the company have to overcome separate barriers when going 'with' the company.

As noted, services are not and cannot be protected by tariffs. The barriers can be usefully distinguished (e.g. Dee, 2005; Dee & Hanslow, 2002) between '*tariff-like barriers*' and '*resource costs increasing barriers*'.[15] The former lead to price hikes of services, not because resource costs have gone up but due to artificially created scarcity (the potential 'foreign' supply curve is pushed to the left), with the economic rents going to incumbents. Like tariffs, these barriers are discriminatory between incumbents and foreign providers. The latter increase the resource costs of doing business in the target market, for instance, by requirements that 'level the playing field' for professionals (if no equivalence of competences is accepted, additional training or exams might be needed). If such types of measures are an expression of (too?) heavy regulation, liberalisation may remove what is excessive (disproportional) in these requirements.

This is tantamount to a vertical shift down the supply curve, associated with technical efficiency gains (i.e. rectangles over the entire volume of output). Such efficiency gains are equivalent to a productivity hike, benefiting incumbents via the lowering of costs, benefiting foreign entrants by easing access and lowering costs for local users. Welfare rectangles tend to be a multiple of welfare triangles, partly because their base is the entire volume of output unlike for welfare triangles, and hence, liberalisation via domestic reforms can be highly beneficial *and* facilitate market access in services. On the other hand, liberalisation of 'tariff-like' barriers will inevitably reduce or eliminate 'rents' and this redistributive effect is likely to be resisted. Thus, the strength of the non-discrimination principle is found in the 'apolitical way' it is capable of reducing services barriers, despite likely resistance of incumbents. Note that the economic impact of barriers to market access for services not only hinges on this distinction between tariff-like barriers and resource-cost-increasing barriers. As Deardorff & Stern (2008, pp. 174–178) show in a graphical analysis, it also matters whether the domestic services sector is competitive or not, whether the domestic and foreign entrants' services are readily substitutable and whether or not the domestic incumbent has monopoly power.

An often-quoted classification (Hoekman & Braga, 1997) of barriers to services trade groups restrictions into four classes, as shown in Table 3.

[15] This distinction goes back at least to Pelkmans & Winters (1988), analysing the economic impact of EC1992.

Table 3. Barriers to services exchange, basic classification

Barriers	**Examples**
1. Quotas, local content, prohibitions	Quotas usually apply to the providers, so do prohibitions (although services as such are sometimes forbidden too); quotas and local content throttle the pro-competitive effect of entry and may engender artificial scarcity.
2. Price-based instruments	Examples include visa fees, annual residence fees, entry or exit taxes, discriminatory port fees, but also price-regulation for certain services (e.g. telecoms local services).
3. Standards, licensing and public procurement	Licensing/certification often impose limitations on the 'right to exercise the business' in an operational sense; this may well be accompanied by an 'economic needs' test, applied – more often than not – by the incumbent competitors; standards of how to conduct the business might imply 'raising rivals' cost' measures, again throttling competition; public procurement may be (outright) discriminatory by an allowed price margin (as in the Buy American Act) or by large discretion in procedures.
4. Discriminatory access to distribution networks	Examples can be found in network industries but also in advertising and dealer networks.

The main drawback of the classification in Table 3 is that it refers mostly to *discriminatory* measures,[16] whereas non-discriminatory measures can also be restrictive and serve as barriers to access (as is known from the economics of 'raising rivals' costs'). It is also blending the pure trade aspect and the establishment aspect. Linking the classification of barriers with the economic analysis of their restrictive impact is hard. The literature approaches measures often from a legal or administrative perspective, rather than economic. However, when it is economic, a *paradox* appears: classifications of barriers focus mainly on FDI and operational restrictions once *established,* whereas the empirical economic analysis of services exchange is almost always based on cross-border *trade* statistics.

This is exemplified in a well-known UNCTAD (1996) classification, summarised in a more aggregate way by Deardorff & Stern (2008, p. 182) and reproduced in Table 4. It distinguishes three main classes of barriers to foreign direct investment in services: restrictions on market entry, ownership and control restrictions and operational restrictions.

The early work on the EU internal market for services during the Lisbon strategy has (rightly) paid attention to a quite different economic perspective to barriers in services exchange: How do barriers cumulate over six stages *of the value chain* in services provision? The greater the cumulation of barriers, the more discouraged cross-border business will be, even when some or many individual barriers would seem to be manageable. This is particularly problematic because different services – especially for cross-border business – are intricately intertwined and barriers in one stage of the provision chain will tend to engender knock-on effects throughout the chain. Box 1 summarises the classification of barriers in the internal services market over six stages.

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[16] The focus on non-discriminatory access barriers is critical for the EU internal services market, since discriminatory ones are strictly forbidden (see further). However, the authoritative survey by Francois & Hoekman (2010) and the one by the WTO (2012) still heavily rely on addressing discriminatory services barriers in the non-EU WTO environment. Indeed, so much so that they "use the term liberalisation to mean deliberate actions that reduce discrimination" (Francois & Hoekman, 2010, p. 659).

Table 4. Barriers to foreign direct investment in services

Restrictions	Examples
Market entry	Bans on foreign investment in certain sectors
	Quantitative restrictions (e.g. no more than 25 % foreign ownership in a sector)
	Screening and approval (can be based on 'national interest' or 'net economic benefits (or 'needs') test')
	Restrictions on the legal form of the foreign entity
	Minimum capital requirements
	Conditions on subsequent investments
	Conditions on location
	Admission taxes
Ownership and control	Compulsory joint ventures with domestic investors
	Limits on the number of foreign board members
	Government appointed board members
	Government approval required for certain decisions
	Restrictions on foreign shareholders' rights
	Mandatory transfer of some ownership to locals within e.g. 15 years
Operational	Performance requirements (e.g. on exports) (see TRIMs in WTO)
	Local content restrictions
	Restrictions on import of labour, capital and raw materials
	Operational permits or licences
	Ceilings on royalties
	Restrictions on repatriation of capital and/or profits

Sources: UNCTAD (1996), as adapted by Deardorff & Stern (2008) and by the authors.

Box 1. Barriers over six stages of services provision

1. **Establishment of services providers**

Monopolies and quotas, nationality/residence requirements, authorisation/registration, restrictions on multi-disciplinary activities, legal form and internal structure of firms, professional qualifications, line-of-business restrictions (including discriminatory taxes)

2. **Use of inputs for services provision**

Posting of workers for temporary services, use of employment agencies of other EU countries, other complications related to the cross-border deployment of workers, cross-border use of business services and of equipment and material

3. **The promotion of services**

Authorisation/registration/declaration procedures, ban on advertising, restrictions on content of advertising, form of advertising, ban on publishing comparative goods/services testing

4. **Distribution of services**

Monopolies or quantitative restrictions on access to activities, nationality/local-establishment requirements, authorisation/registration/declaration procedures, requirements regarding the internal firm structure and legal form of the company, professional qualifications, restrictions on the exercise of the distribution of services, restrictions on the receipt of services

5. **Sale of services**

Forms and content of contracts, price setting (plus payments, invoicing and accounting) can be distinct as to method and levels (e.g. with professional associations), taxation (e.g. exceptions to VAT create complexities/delays in return), reimbursement/subsidy issues, public contracts and concessions

6. **Difficulties relating to after-sales services**

Liability and professional indemnity insurance of providers (great and costly disparities between EU countries), debt collection, provision of after-sales services, legal redress

Source: European Commission, COM (2002) 441 of 30 July 2002, The state of the internal market for services, pp. 58-59.

Placing oneself in the position of a business executive, would such a steeple-chase over numerous barriers, often with significant discretion on the part of the national authorities and hence considerable legal and operational uncertainty, not to speak of the cumulative costs, be worth it? And even if certain larger providers of business services (e.g. multinational companies in accountancy, or law firms, or in road transport, etc.) might feel compelled to 'follow' multinational clients in manufacturing and somehow absorb such costs, there can be little doubt that the number and combined effect of barriers in Box 1 may be nearly-prohibitive for almost all SMEs.

3.3 Two examples of sectoral services barriers

We reproduce, with a few changes, two sectoral illustrations of barriers to the provision of services from the literature. The purpose of this subsection is to clarify for readers, not least for economists who might wish to estimate the economic impact of barriers or of their removal, how incredibly complex the regulatory context of many services is, and hence, how difficult it will be to fully appreciate "the" removal of service barriers wholly or in part. The point is not to discourage such attempts, but rather to provide a reality check and to offer a basis for comprehending the caveats and drawbacks of estimates.

Box 2 lists 10 restrictive regulatory barriers in banking for establishment in non-EU countries. [17] Apparently, the table assumes that many other regulatory aspects of banking – not mentioned here – are imposed on a non-discriminatory basis and in such a way that they do not constitute a form of 'raising rivals' costs' (inspecting such subtle barriers requires a very detailed and careful analysis of domestic regulation and local supervision).

Box 2 shows that 'commercial presence' (establishment) under GATS can be, and often is, restricted in numerous ways and various degrees of stringency. In principle, it is possible to 'guesstimate' degrees of restrictiveness (in scores from 0 to 1, 'one' being the most restrictive) of each element of the overall restrictions list, and arrive at an overall *restrictiveness index*, which, in some sense, could be regarded as a (very rough) proxy for the barriers that are so hard to measure. If done systematically and without bias, one can compare such indices between countries, as well as shed some light on changes over time of the

[17] The authors (Deardorff & Stern, 2008) employ Box 2 for scoring the components of a foreign services restrictiveness index and their weight in the index. Here, we ignore these scores and merely list the 10 barriers. See also section 6.

regulatory regimes (here, of banking).[18] In the absence of superior alternatives, these indices give at least some idea of what might be seen as 'barriers'. Nevertheless, one has to be extremely careful in accepting these 'verdicts' too easily since there is no authoritative way of disaggregating the details of such domestic regulation, let alone, of determining how weights should be determined. The upshot is that different authors use different methods and come up with vastly different results. That the degree of disaggregation matters will be shown in the second illustration on air transport services.

Box 2. Barriers, as restrictive regulation, to FDI in banking

Restrictions on commercial presence

- Licensing (authorisation) of foreign banks (e.g. quotas, area restrictions, etc.)
- Merger or take-over restrictions (e.g. prohibition, or limits of equity share participation)
- Joint venture obligations (e.g. obligation to enter only via JVs, or for a certain period)
- Movement of people (e.g. can senior managers, executives, specialists become permanent residents, or, if not, can they stay for years, and if so, for how many years?)

Other restrictions

- Raising funds by banks; can they accept deposits and, if yes, unrestrictedly so? can they raise funds from the (domestic) capital market?
- Lending funds by banks; restrictions in the types/sizes of loans; impositions to provide mortgages and/or loans to SMEs, etc.
- Refusal of 'universal bank model', which is common in the EU; i.e. no insurance and/or securities services can be provided, or, in restricted forms
- (Expanding) the number of banking outlets; restrictions given or changing over time
- Ownership and control restrictions, e.g. how many foreigners in the board and e.g. majority (?)
- Temporary movement of people (GATS, mode 4); how many days can how many executives, specialists, managers stay for short-term visits?

Sources: Deardorff & Stern (2008), based on McGuire & Schuele (2000).

Box 3 is similar to Box 2, but now for air transport. International air transport is traditionally regulated via bilateral agreements, based on the 1944 Chicago convention and inspired (at first) by the mercantilist Bermuda-I agreement and later by the more liberal Bermuda-II agreement. Such bilaterals have remained outside GATS (WTO). The basics of such bilaterals hinge on the right, restricted or not, of providing air transport services between country A and B, i.e. landing rights are granted. Landing rights and the bilateral air services agreed to can, in the best case, benefit from no less than seven 'freedoms' with increasing liberalisation as well as 'cabotage' (transport rights inside a country B by an airline from A when going to A or coming from A). Air transport regulatory regimes not allowing more than the first through the fourth freedoms are rather restrictive, quite apart from many other restrictions (see below). Since the mid-1990s, more and more countries have relaxed these restrictive regimes, under distinct strategies of liberalisation (such as the so-called 'Open Sky'

[18] For an application to the elements of banking as described in Box 2, see Dee (2005, pp. 29-30). More generally, restrictiveness indices will be dealt with in section 6.

agreements, etc.). Thus, depending on the country, bilaterals might (still) be very restrictive, somewhat restrictive or relatively liberal. The old bilaterals would designate specific airlines (often, only one from each country) for which the bilateral would apply, implying monopoly on bilateral city-pair routes and assured zero entry on both sides. Moreover, detailed capacity (sometimes, down to the number of seats in the airplanes) and price regulation, as well as (more or less) rigid rules to agree on price levels and changes (subject e.g. to both authorities' approval, which is highly protectionist), tended to be included. All these aspects are specified in a simplified way in Box 3. In Box 3 the thorny question of the allowed 'freedoms' is only incorporated in a more general way, so as not to overburden the presentation, but more about this will be noted in section 3.4.

Box 3. Barriers to bilateral trade in airline services

Designation requirements

- Single designation
- Multiple designation, with route limitations
- Multiple designation
- No requirements

Capacity regulation

- Pre-determination
- hybrid
- Bermuda 1
- Free determination

Price regulation

- Double approval
- Country-of-origin approval
- Double disapproval
- No requirements

Non-scheduled services

- No formal traffic rights for charter services
- Explicit traffic rights for charter services

Source: Dee (2005, p. 26).

Although the EU Single Services Market will be dealt with later, it is good to realize already here the enormous contrast between Box 3 and intra-EU (EEA) air transport: free movement and the right of establishment in air transport inside the EU have gradually been realised in the period 1987-92, rendering bilaterals inside the EU superfluous (and illegal), whilst subjecting airlines fully to EU competition law as well as to EU regulation on safety, occupational health & safety rules for pilots and staff and licensing conditions. De facto, and to an extent even de jure, this has been extended to all European countries and even Russia. The upshot is that almost nothing of what is listed as restrictive in Box 3 can restrict intra-EU air transport today!

3.4 Exemplifying regulatory finesse of services barriers: Airlines in ASEAN

Following Dee (2009), we shall outline the restrictiveness of the air transport services regime in the member countries of ASEAN (Association of South East Asian Nations), as an *example* of disaggregating the categories of barriers listed in the previous boxes. In this way, the reader can begin to appreciate better what it means to absorb or overcome such barriers. Understanding services barriers in (here) air transport requires an incredible amount of detailed knowledge about many restrictions, as well as the combination of specific elements of such restrictions. Annex 1 reproduces the full table from Dee (2009, pp. 42-44) and the text below will inevitably simplify somewhat. As a corollary, the reader might also begin to appreciate the merits and potential benefits of the EU Single Air Transport Market, where most of such barriers or restrictions are out of the question.

Philippa Dee has constructed a scorecard (for ASEAN) based on itemised possible air transport services restrictions. It comprises no less than 92 restrictions. However, for a proper understanding, the scorecard is solely used here to render more intelligible the nature and complexity of air transport services restrictions – of course, this CEPS Special Report is *not* interested in ASEAN itself. The 92 restrictions do *not*, however, even include the most important 'barriers' in air services agreements, that is, landing rights and the specification of the 'air services freedoms' that apply. The reason is that the ASEAN Multilateral Agreement on Air Services is assumed to apply, an agreement in the framework of arriving at the ASEAN Economic Community by 2015. In this regional agreement, there is a so-called 'Open Sky' commitment about third, fourth and fifth freedoms in air services which – given the mercantilist tradition in air services bilaterals – goes quite far in the liberal direction.[19] Yet, that is exactly why this example is so instructive about the manifold and often subtle (but no less obstructive) restrictions in services, here, air transport. Thus, despite all 10 ASEAN countries being committed to 'Open Sky' obligations amongst themselves, which might lead one to believe that a liberal service regime is installed, no less than 92 other relevant restrictions may well apply in one, several or all ASEAN countries! For a good understanding, these restrictions (except item B., see below) may apply to scheduled passenger air transport, cargo or cargo only for express parcels, and charters. Although two of the 92 items are elements of (what in the EU is seen as) competition policy – namely, state aid to airlines and – with some overlap – loss coverage by the government – central tenets of competition policy such as cartels, mergers and monopolistic conduct, which are likely to constitute a serious hindrance to entry for foreign providers, are *not* even included in the list of 92.

The main categories of possible restrictions in the scorecard include 'commercial presence' (GATS mode 3) – mainly restrictions on 'entry', divided into restrictions for any

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[19] Trade in air services begins with the third freedom (the first is a fly-over right; the second is landing only for re-fuelling and maintenance). The third and fourth freedoms consist of air services between countries A and B; the third one between A and B for a company from A, the fourth one between A to B for a company from B. If there is no designation of airlines, this freedom is unrestricted: any licensed airline from A or B can fly between A and B. With designation, however, the freedoms only apply to those airlines explicitly designated. The fifth freedom is the right to fly from A to B by an airline from C as long as the flight ends in or originates from country C. The sixth freedom idem, but now the company from C may only need to stop in C. The seventh freedom drops even that restriction: an airline from C can provide air services between A and B (basically what the EU would call 'free movement' as long as C is an EU country). Besides, there is cabotage (as in all transport modes): flying between two or more airports inside country A by a company from (say) B. Cabotage is allowed but restricted if the airline has to offer cabotage as a part of a service continuing to its own country; if unrestricted, an airline from B has all the freedom to operate inside A.

firm versus those applying only to foreign firms, hence, discriminatory – restrictions on cross-border trade (mode 1 of GATS, though airlines do not fall under GATS today), restrictions on the movement of intra- airlines corporate transferees (staff) of foreign airlines in the relevant (ASEAN) country, restrictions of private ownership – is private ownership allowed, whether for existing companies or for new entrants? – as well as a list about restrictions of foreign ownership – existing versus new entrants – complemented by questions like 'golden shares' for the government giving it special voting rights and the ownership of airlines in international airports (which can lead to anti-competitive conduct or structures) and, last but not least, restrictions in air transport regulation (such as on the setting of air fares, the allocation of slots on (busy or congested) airports as well as a host of differentiated licensing conditions. Constructing a restrictiveness index from so many variables is not just complex but clearly hazardous. This does not necessarily imply that such empirical exercises are meaningless, e.g. even when all restrictive items found are given an equal weight of one, some very rough conclusions are nonetheless possible. All ASEAN countries have quite a few restrictions except Singapore (only 6), varying from 19 (Thailand) to 51 (Malaysia), Laos (55) and even 66 (Vietnam), with an ASEAN average of no less than 37. Moreover, Dee complains about the secrecy of a number of arrangements which simply are not published or supplied upon request for academic purposes! Such secrecy is either a source of discriminatory treatment (which is very hard to discover) or a barrier in itself. In Annex 1, this secrecy shows up in the listing under mode 1 (item B.), cross-border intra-ASEAN flights, of restrictions *only* for various charter services, and *not* for scheduled passenger services which are of course far more important – the restrictions for the latter have not been systematically provided to Dr. Dee. Furthermore, this might mean – but there is no way of knowing – that airline designation and capacity restrictions (see Box 3) in cross-border intra-ASEAN scheduled passenger flights, which are not explicitly mentioned in the box, have to be added in the list of 92 items. In the past, these two restrictions were usually applied rather frequently and the complete removal would indeed signal far-reaching liberalisation.

This disaggregation exercise on the basis of careful research by Dee (2009) demonstrates that even a list of 92 items is far from clear or complete on i) the air transport freedoms, ii) capacity restrictions (if any), iii) airline designations (if any) and iv) all, rather than some, elements of competition policy or its absence. It is therefore less than clear, to put it mildly, what one can actually measure when using restrictiveness indices in such a case.

4. The EU horizontal services Directive: Nature, meaning and barriers removal

The basics of the 2006 EU horizontal services Directive are simple; the precise details are not, as shown, for example, by the Commission Handbook (European Commission, 2007) and the very detailed report on the mutual evaluation exercise on the implementation of the services Directive between the EU member states (European Commission, 2011a, 2011b). For present purposes, the basics will do, complemented with some telling examples about removed barriers to intra-EU services exchange.

4.1 Nature and economic meaning of the services Directive

The services Directive is a 'horizontal' *liberalisation* directive, that is, it applies across-the-board to a range of sectors in a similar way. It does *not* aim to harmonise national objectives and instruments of specific services regulation, let alone, replace national by EU regulatory regimes. By and large, it codifies the CJEU case law on free movement and the right of

establishment, complemented by some helpful features (such as detailed administrative cooperation between member states; lowering information and transaction costs for business by administrative simplification and trade facilitation e.g. the national Points of Single Contact; and provisions on the quality of services) which should reduce significantly the perceived costs of doing (services) business in the internal market. The codification in this directive greatly simplifies the enforcement of the economic freedoms, in particular by an explicit catalogue of forbidden regulatory restrictions imposed by (some) member states.

When trying to grasp the *economic* meaning of the services Directive, one might be forgiven for being misled by its relatively modest ambition in re-asserting free movement (in Art. 16, the proposed country-of-origin principle was removed by the EP) and the right of establishment (chapter III, restating case law, but in a more practical fashion). The economist might ask what the value-added is of restating what treaty and case law already provide for. An economic impact analysis might attempt to capture the lower information and transaction costs and the gains of easier market access due to faster and more effective administrative cooperation between the relevant officials of the member states. But that would be it, more or less.

This expectation is wrong-footed for several interesting reasons. First, the shift from mere CJEU case law to a directive (e.g. with lists of explicit prohibitions) and the uniquely rigorous implementation (see Box 4) have moved the potential economic impact far beyond a trivial one, both for trade (free movement) and FDI (establishment). Second, removing services 'barriers' in the EU internal market takes place by either abolishing or reducing (the restrictiveness of) national regulation, non-discriminatorily. This simply means that a rigorous implementation of the services Directive amounts to a *domestic* pro-competitive regulatory *reform*. Therefore, the economist has to realise that the opening up to (more) services imports is neither the only effect, nor is it the predominant economic effect. The latter will consist of the economic impact of domestic reform of services markets (implied by barrier removal), bound to be larger overall, since domestic volumes of services output are much larger than intra-EU services trade. Initially, the domestic reform element was not incorporated in empirical economic research on intra-EU services liberalisation, as briefly surveyed in Mustilli & Pelkmans (2012). However, the work by Monteagudo, Rutkowski & Lorenzani (2012) clearly supports the two points made here. Having access to country data of the 2010 mutual evaluation (see Box 4), they first show for 14 main service activities:

- the average percentage of barriers to intra-EU services trade removed/reduced per EU country, ranging from 1% to 61%, and from 6% to 58% for barriers to FDI and their local activity;
- the number of restrictions abolished (around 300 in total) or partially reduced (some 800-plus in total) for each sector and
- the share of previously existing restrictions abolished or reduced, in each sector, ranging from 83% (travel agencies) to 61% (accountants).

The conclusion is obvious: the Directive boiled down to a major domestic reform of the services falling under it. The results of their empirical estimates are presented in three steps: a conservative estimate of a positive impact on EU GDP of 0.8%, another 0.4% when EU countries would all find themselves at the EU average level of barriers and, finally, not 0.4% but 1.6% on top of 0.8% in case member states are assumed to find themselves at the level of restrictions of the five least-restrictive ones in the Union. In accordance with the above, they note that the "…domestic transmission channel, i.e. the direct impact of barriers reduction on labour productivity, turns out to be very significant and…the main driver of the estimated GDP effect" (p. 34).

Box 4. How implementation of the services Directive greatly improved market access

EU member states have a duty, under the treaty, to properly implement any directive and it is no different for the services Directive 2006/123. However, this Directive was regarded as so complex and important that it comprises a uniquely detailed programme of obligations with respect to national implementation, often in close cooperation with the Commission *and* with other member states. Thus, besides a detailed Handbook for implementation (European Commission, 2007) – already unusual – and a multi-annual cooperation effort in several joint implementation committees (member states and the Commission) – again, this is not the regular practice as member states are usually on their own – all member states had the explicit duty to 'screen' their domestic national and regional legislation on its compatibility with the Directive (in effect, with EU law and case law, something that had almost certainly never been done before by any member state given the massive body of services law in every EU country at various levels). This domestic screening was bound to uncover many illegitimate restrictions that had so far gone unnoticed and indeed, it did, thousands of them; all of these have been removed. On top of all this, Art. 39 of the Directive imposes a 'mutual evaluation' between member states of the implementation and screening in 2010, again a uniquely cooperative exercise. The mutual evaluation report (European Commission, 2011b) reveals in great detail how much has been achieved by this joint exercise between the member states. The upshot is that the removal of barriers, including hidden discrimination, has been far more rigorous and extensive than anybody could reasonably have expected. Intra-EU market access has improved greatly and EU enforcement will be less problematic than feared.

4.2 Removing or disciplining national restrictions in services markets

We shall now elaborate on the specifics of the removal or disciplining of domestic regulation (causing 'barriers') under the services Directive. We present two tables with critical liberalisation measures provided for in the services Directive: Table 5 on the right of establishment in other EU countries and Table 6 on the free movement of services in the internal market. Table 5 summarises three catalogues of restrictions on the right of establishment of services providers, now explicitly forbidden or disciplined. Both for authorities, local, regional and national, of member states and for companies, in particular SMEs, the relevant articles in the Directive (and the explanation in the Commission Handbook) are far more simple, user-friendly, practical and transparent than the splintered and complicated case-law in services drafted over many hundreds of cases heard over more than two decades. These prohibitions and evaluations (disciplines) reflect a long experience of the Commission with illegal or problematic practices in the internal market,[20] and the progress in *effective* liberalisation as captured in the provisions in the Directive is significant.

[20] How much the EU has progressed in this respect is clear when comparing Table 5 with Tables 4.1-4.3 (pp. 53-54) in the consultancy report by the Centre for Strategy and Evaluation Services (2001), "Barriers to trade in business services", which underpinned the well-known Commission paper (2002), listing and discussing the services barriers in the internal market and used for Box 1 of this CEPS Special Report. Of the nine barriers to trading services cross-border in the EU in their Table 4.1, eight are clearly forbidden and one is at least better addressed today (diploma recognition of professionals); of the 10 barriers on establishment, six are forbidden and three of the other four would have to be evaluated against EU principles; of the 16 barriers that are not necessarily 'regulatory' but perhaps cultural (etc.), seven would be impossible under proper (EU) enforcement under the services Directive or wider (e.g. subsidies) and one (national standards) has gradually become irrelevant, since European standardisation is taking over. The remaining barriers in this group are either unavoidable (e.g. local language) or under local regulatory autonomy of member states (e.g. land zoning) or could possibly be assessed under 'proportionality' and 'better regulation'.

Table 5. Barriers to establishment outlawed or disciplined by the EU services Directive

Provision	Prohibitions
Art. 14 on prohibited requirements	1. Discriminatory requirements based on nationality or location of head office (such as nationality requirements for provider, staff, persons holding share capital, or residency obligations) 2. Requirement of having an establishment in more than one EU country, or, enrolled in professional bodies or associations in more than one EU country 3. Restrictions on the freedom of a provider to choose between a principal or a secondary establishment, or on the freedom to choose between an agency, branch or a subsidiary 4. Reciprocity conditions, e.g. with another member state 5. 'Economic needs' test, at least not case-by-case (except for land planning or other overriding reasons of the public interest – strictly narrow, CJEU) 6. Direct or indirect involvement of competitors in the granting of authorisations or related decisions 7. Obligations to take out insurance of financial guarantees from a local provider or body, rather than a general obligation of insurance 8. Obligations to have been pre-registered or to have previously exercised the activity in the target country
Art. 15, requirements to be evaluated	1. In Art. 15.3 the following restrictions have to be evaluated with respect to three conditions, fundamental principles of EU (internal market) law: (a) Non-discrimination (far-reaching in the EU), (b) Necessity, the 'overriding public interest' test and (c) Proportionality, hence, (i) suitable to attain the objective, (ii) does not go beyond what is necessary to attain the objective and (iii) least restrictive 2. Quantitative or territorial restrictions (e.g. minimum geographical distance between providers; limits according to population) 3. Specific legal form 4. Requirements about the shareholding of the firm 5. Reservation of activities to certain providers, except where explicitly allowed by EU law, e.g. professionals 6. A ban of having more than one establishment in a country 7. Fixing a minimum no. of employees 8. Fixed minimum or maximum tariffs 9. Obligations to supply other services jointly with his service
Arts 9–13, on disciplines, transparency and fair procedures of authorisation	1. Authorisations are always subject to the same three principles as above, under Art. 15, item 1. 2. Other criteria to be applied in the evaluation include clarity and unambiguity, objectivity, advance publication of criteria, transparency and accessibility. 3. No duplication of requirements or controls that are equivalent to those already made in any other EU country (kind of mutual recognition). 4. Appropriate speed (as soon as) and such periods must be clear in advance; being late as an authority, means: authorisation is granted. 5. Refusal to be fully reasoned and open to challenge in local courts. 6. No limited periods (except justified – strict test). 7. If resources or technical systems (e.g. frequencies for mobile telecoms) impose scarcity, the selection of candidates must take place with impartiality, transparency and adequate publicity.

Table 6 summarises forbidden restrictions as well as disciplines of national regulation of the intra-EU cross-border free movement of services ('trade'). Art. 16.1 reiterates the free movement obligation of the treaty and specifies that member states shall not make access to or exercise of a service activity in their territory subject to regulation that does not respect non-discrimination, necessity and proportionality. Art. 17 collects a large number of sectors and services activities that do not fall under the Directive (so-called derogations). Most of these fall under specific EU regulation (see section 5). However, whatever misgivings one might have of this long list of derogations, there are nevertheless a lot of services which do fall under the directive (see section 4.3).

Table 6. Barriers to services trade outlawed or disciplined by the EU services Directive

Art. 16.2 on prohibited requirements	1. No establishment obligation in EU country of destination 2. No required authorisation, including entry in a register, or registration with a professional body, except where provided in this directive or in other EU law provisions 3. No banning of certain business infrastructure needed to supply services from another EU country 4. No services contract between provider and recipient which prevents or restricts services supply by the self-employed 5. No requirement for IDs, specific to the exercise of a service activity 6. No requirements which affect the use of equipment/materials needed for services supply, unless regulated for health and safety reasons (but usually this is under EU directives; asking more is very hard to justify as proportionate).
Art. 16.3 on national regulation which *can* be imposed **[national regulatory autonomy]**	Allowed are regulatory requirements justified by a) public policy and public security [strict CJEU case law disciplines]; b) public health [often under EU regulation already]; c) environmental protection [again, often under EU law, except when truly local]; d) rules on employment conditions including those in collective agreements [not caught by EU law, as a rule, since this is under national powers] [Note that by the end of 2012, the Commission can propose harmonisation directives, if Art. 16.3 gives sufficient reasons.]
Art. 18 on safety regulation (strict discipline)	In exceptional circumstances only, and solely if issue is not under EU regulation, if protection higher in receiving country, for the *recipient,* than in country of origin and if 'mutual assistance' between member states (Art. 35) is not sufficient.
Arts 19-20 on restrictions affecting the *recipients* of services	No restrictions on service supply from another member state, i.e. no authorisation or even a declaration to authorities, and no discriminatory provisions relating to nationality of the provider or the place of residence

Table 6 clarifies that, despite the removal of the origin principle, intra-EU cross-border trade in services has become protected by a range of explicit prohibitions (some overlapping with those related to establishment) and several tight disciplines. Also the recipient of services is explicitly protected against restrictions. Furthermore, the administrative cooperation between member states is crucial: only if this 'mutual assistance' does not yield satisfactory results, can certain safety rules be imposed, but even then under disciplines. All of the specific prohibitions and disciplines are elaborated in great detail in the Commission Handbook. It would go beyond the purpose of the present paper to discuss these questions at such a level of detail. But readers are warned that some of the interpretations or the remaining regulatory

autonomy of member states or sub-central governments may well lead to additional costs of market access which, in business circles, might still be perceived as barriers. In this respect, the EU's internal market is hardly different from those of federal OECD countries such as the US, Canada, Switzerland or Australia. All of these internal markets have such 'barriers' in services in different degrees (for a careful comparison, see Anderson, 2013).

Any system of two-level government will, by its very nature, allow and indeed respect some degree of regulatory autonomy of the states or provinces or cantons, in particular where local preferences lead to an insistence of regulation that has no counterpart at the central level. In 'deep' internal services markets, the scope of such autonomy has shrunk drastically but fully-fledged centralisation or total uniformity is neither desirable from a welfare-economic point of view nor is it found anywhere in federal countries. Therefore, it cannot be surprising that the EU, which is not even a 'country' and only has a quasi-federal set-up of its internal market, would have no perceived 'barriers' left. On the other hand, the services Directive and its uniquely meticulous implementation have erased numerous barriers which, justified or not (often not!), frustrated and fragmented the internal services market only a decade ago.

One final point should be made on the second row of Table 6, Art. 16.3 on national regulatory autonomy. Prior to the services Directive, CJEU case law on such regulatory autonomy had been built up in the absence of suitable EU legislation by the Council and European Parliament. Fearing that the EU Court would be forced into a position of a quasi-legislator, which of course it did not want, the CJEU judicial strategy was to allow a wide scope of derogations of free services movement (in principle) justifiable for member states, combined with strict disciplines in terms of non-discrimination, proportionality, necessity and options for mutual recognition.[21] Much of this case law is recognisable in the Directive, as shown in Tables 5 and 6. However, Art. 16.3 on national regulatory autonomy is narrower than the prior case law: besides obvious grounds such as public policy and public security – the CJEU has a forceful tradition of defining such derogations very narrowly, in order to prevent misuse – public health and environment (the H and the E of SHEIC) have remained from earlier case law and a clause on employment conditions and collective agreements between social partners is a consequence of the national powers in this domain. Safety – the S of SHEIC – is not in, although a very narrow window is left open in Art. 18 (third row of Table 6) and several other derogations from case law have not been included. Some observers fear that this might, sooner or later, lead to a fundamental case challenging the Directive's legal validity, because the (EU) legislator cannot overrule CJEU case law, seen as an extension of the treaty.

Given the prudency of the CJEU prior to the Directive, leading to a definition of a very wide scope, it is not clear whether such derogations 'in principle' will retain any practical meaning now that the EU legislator has finally enacted. There is the famous derogation on tax breaks for the interest paid on mortgages loans, which the CJEU said could be merely 'national' (hence, not for cross-border mortgages!) so as to not undermine the 'coherence of the national tax system'.[22] However, this problem is pre-empted by Art. 2.3, excluding taxation. There are the I (investor and savers protection) and the C (consumer protection) of SHEIC, which are not mentioned in Art. 16.3. Clearly, investors and savers are protected under financial market regulation and supervision, which falls outside the scope of the

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[21] A convenient summary of these derogations, called "overriding reasons relating to the public interest" and often referred to as the doctrine of the "general good" in relation to free movement of services and the right of establishment of service providers, is found in the Preamble of the services Directive, item 40.

[22] The famous Bachman case: Case C-204/90 *Bachmann* [1992] ECR I-249.

Directive. With respect to consumer protection, the Directive stipulates a number of quality provisions on integrity and information, besides inter-member states' cooperation on e.g. the good reputation of services providers where requested. There are also provisions for smooth dispute settlement, including the incorporation of such facilitation in codes-of-conduct of national professional associations. For the remainder, EU consumer protection remains linked to specific activities (e.g. misleading advertising or door-to-door selling) or specific markets (e.g. financial markets, food safety, non-food safety and alert mechanisms) and is not affected by this Directive.

4.3 What markets and economic activities fall under the services Directive?

Although the scope of this horizontal Directive is wide, it has nevertheless been curtailed for two reasons. First, there is the distinction between (more) heavily regulated services sectors, falling outside 2006/123 as they have their 'own' regulation (and market institutions as well) and lightly regulated sectors which, for the most part, fall under the services Directive. Section 5 deals with the former. Second, in the turmoil of preparing the enactment of the Directive (known at the time as the Bolkestein draft), the country-of-origin principle was the core of the proposed Art. 16.1. This more radical principle not only led to a huge politicisation of the debate, but also to more quiet tactics of sectoral lobbyists trying to simply get their sectors excluded via a derogation. These tactics worked for several activities, enlarging the number of derogations. Table 7 juxtaposes the sectors or activities covered by 2006/123 and those specifically derogated in the text.

On the right-hand side, one sees immediately that the services not covered by the services Directive either have a separate status in the treaty, with their 'own' regulatory regimes (i.e. financial services, transport, network industries) or have been covered on the basis of a separate directive (e.g. patients' rights seeking healthcare, temporary work agencies) or are expected to be covered (e.g. private securities, where common regulation proves to be difficult, and perhaps in future, gambling activities). Barriers remain in areas that are simply derogated, without any further follow-up regulation (e.g. notaries, taxation, gambling). Of course, case law and general EU principles will still apply but may not pre-empt all restrictions.

The European Commission states that the sectors falling under the services Directive generate nearly 43% of the EU's GNP. This figure seems telling about the enormous importance of the services Directive, but it is good to make two annotations:

a) A good deal of this nearly 43% amount to *domestic* service activity and most of this domestic value generation is *not* potentially cross-border in any way – it is hard to say exactly how much.

b) The activities in the left column of Table 7 cannot always be matched with Eurostat statistics so that even the cross-border totals of today (cross-border trade and local output of 'foreign' establishments of EU companies) can only be 'guesstimated' because the data on the latter of the two are incomplete.

Table 7. What sectors and economic activities are covered by the services Directive?

Included	**Not included/Covered**
1. Regulated professions (such as legal and fiscal advisers, architects, engineers, accountants, surveyors) [but diploma recognition matters here, see Directive 2005/36]	1. Non-economic services of general interest (by definition, a 'service' in the treaty is 'economic', so these SGIs cannot fall under the directive); most (subsidised) education, some public health services, social services
2. Craftsmen	2. Financial services, i.e. banking, insurance, investment services and asset management
3. Business-related services (such as office maintenance, management consultancy, events, recovery of debts, advertising, recruitment services)	3. Electronic communications and networks, now governed by the third telecoms package of 2009 (which includes the transport of broadcasting, not the contents)
4. Distributive trades (including wholesale and retail of goods and services)	4. Transport, all six modes (road, buses, river, maritime, air and rail), and taxis + ambulances derogated at the last moment
5. Tourism services (including travel agencies)	5. Services of temporary work agencies, now under Directive 2008/104
6. Leisure services (including sports centres & amusement parks)	6. Healthcare [sticking points here are mobile patients moving across intra-EU borders to receive healthcare services – link with private and social insurance/re-imbursement systems – public healthcare systems are under national powers and 'harmonisation' is prohibited in the Treaty – yet, Directive 2011/24 on patients' rights in cross-border healthcare was adopted]. Note that medical and para-medical professions as well as veterinarians and pharmacists do not fall under item 1, left, and enjoy automatic recognition under a separate legal regime (see section 5.4).
7. Construction services	7. Audio-visual services (broadcasting)
8. Installation and equipment maintenance	8. Gambling
9. Information services (including web portals, news agencies, publishing, computer programming)	9. Activities related to exercise of (public) authority
10. Accommodation and food services (incl. hotels, restaurants, cafés/pubs, catering)	10. Private securities services [in this case, a separate directive is awaited; in the meantime, barriers remain]
11. Training and education (but *not* education entirely or mainly funded by government) (including dedicated courses, business schools, upskilling and refreshing training, commercial language training)	11. Services provided by notaries and bailiffs [often related to an official act of government]
12. Rental (e.g. cars) and leasing services	12. The field of taxation
13. Real estate services	
14. Testing and certification services	
15. Household support services (including cleaning, private nannies, gardening)	

4.4 Lingering barriers after five years of the services Directive

The mutual evaluation (European Commission, 2011a and 2011b) makes it possible to assess the implementation of the Directive, including the widespread removal or disciplining of restrictions, as well as the remaining barriers. The report and very extensive annex allows us to draw up a fairly detailed qualitative panorama of abolitions and simplifications of restrictive measures, due to the screening and mutual evaluation between the member states, as well as a qualitative picture of remaining barriers to services exchange in the EU internal market. The exercise is complementary to the more aggregate presentation in Monteagudo et al. (2012) and identifies barriers in considerable detail. This is done in Tables 8, 9 and Annex 2 (a detailed sectoral perspective).

Tables 8 (on establishment-related restrictions) and 9 (on cross-border restrictions) leave no doubt about the considerable abolition and simplification of restrictions to intra-EU services exchange due to the services Directive, following the screening exercise and the mutual evaluation. Following the Commission's report on the latter, it is also clear that the mutual evaluation amongst the EU member states has given rise to numerous discussions about the regulatory rationale of lingering restrictions, in effect, the justification and scope or boundaries of market failures as well as the assessment of the proportionality of the tools of government intervention. In other words, the evaluation has had a 'better regulation' effect as well. However, it is equally clear that a select number of remaining barriers either seem to have a questionable justification in terms of market failures or appear to be more restrictive than necessary. Today's much greater transparency of services barriers in the EU will therefore help to pursue still deeper liberalisation or simplification in the years to come, thereby accomplishing greater exposure to actual or potential competition in the Single Market and/or lower transaction costs when barriers are, in principle, justified but the means too heavy.

Table 8 shows that, depending on the type of services falling under the services Directive, exploiting the right-of-establishment can be quite a burdensome venture. Going by the crude impact indicators, the restrictive impact of barriers to establishment in these 'regulated' sectors cannot be taken lightly. At the same time, one should always keep in mind that some sectors under the services Directive are hardly or not affected by the barriers listed in Table 8 (e.g. office management, management consultancy, information services – see Table 7 – and household support services; probably industrial cleaning as well, subject to EU SHE regulation). Moreover, tourism appears to be subjected to more restrictions than one might perhaps expect, but these restrictions apply merely to a narrow subset of tourist services (e.g. special guiding tours and mountain or cave trips) as well as some regulation of travel agencies, which hardly affect most economic activity in European tourism. In other words, it is crucial for an economic assessment to have careful regard to the (sub)sectors affected and not affected by the restrictions listed in Table 8.

We shall come back to the sectoral perspective, shortly. In the impact column of Table 8, for the nine categories of restrictions to establishment, there are only two As (light), as against 5 Bs (more than a nuisance), 8 Cs (restrictive, anti-competitive) and 5 Ds (severe hindrance, which *can* sometimes mean 'impossible'), mitigated by selective abolition and simplification for all nine categories. The services Directive may have cleaned up a lot of restrictions of establishment but this is not to be interpreted as 'unrestricted' market access, dependent on the activity. Another striking feature of Table 8 is the incredible diversity, or, if one wishes, regulatory 'heterogeneity', in the exact instruments employed as well as in what cases they are (not) employed. The more one zooms in, the greater this heterogeneity appears to be. That is, in the categories where practically all member states seem to apply similar

restrictions [in categories 1, 2, 3, 4, 7 and 9], a colourful variation of details can be observed. The most obvious instance is item 7, where service tariffs are regulated by law or decree or via recognised self-regulation: there are fixed, maximum and minimum tariffs and they differ by member state and, often, by activity. In various ways, this heterogeneity applies for all categories. This is even true for one category [no. 9, restrictions on multi-disciplinary activities] where the services Directive explicitly restricts its application to technical certification and to the professions only. The heterogeneity is reflected in a different fashion in categories 5, 6 and 8 where some member states employ the instruments and (many) others do not, raising questions about the justification of such restrictions, or, alternative (least-restrictive?) ways used by those other member states.

From an economic and business point of view, the expected economic gains of the services Directive were at first thought to be primarily in the establishment chapter, hardly touched by the ferocious debates in the European Parliament, and explicitly doing away with truly anti-competitive restrictions such as the ‘economic needs’ test or other severe hindrances (see Table 5, Art. 14) to market access. With the help of Table 8, one can conclude that none of the eight prohibited requirements in Art. 14 appear in the list of remaining barriers, showing the practical success of the Directive. These restrictions were often throttling the incentives to invest abroad inside the internal services market (and sometimes rendering it impossible), and their removal is bound to have a significant economic impact in the longer run. Nevertheless, for a services company to establish in a second (or third) national EU market, one needs to adapt to and incorporate the local properties and tacit services business culture, which is not always easy. The competitive advantages of the company or its service products should be such that it still pays to enter, given the adaptation required to appeal to local clients.[23] Beyond that, the remaining barriers come in: those listed in Table 8 may well generate considerable costs and delays, or, worse, may negatively affect the business model used successfully so far. Therefore, although the services Directive is undoubtedly useful in opening up some national services bastions and lowering transaction costs by means of simplification, the costs of adaptation to local business and tastes (often, larger than in goods markets) as well as the lingering barriers militate against the expectation that the boost to intra-EU establishment in other markets is going to be huge. Moreover, for companies considering *EU-wide* business strategies, Table 8 shows the incredible regulatory heterogeneity in a number of services sectors which raises (*ceteris paribus*) the fixed cost of entry for each separate market and might even, in some cases, put at risk the tested or planned business model (see also section 6).

[23] See Francois & Hoekman (2010, pp. 650-651) for a more fundamental discussion of models explaining FDI, e.g. the knowledge-capital model and firm selection approaches; also, internalisation of transaction costs and their (in)application to services exchange.

Table 8. Establishment of related intra-EU services barriers: Removals and lingering

Barrier type	Common?	Restrictive impact on cross-border services	Abolished, less stringent, simplified	Barriers maintained	
				Frequency	Main forms
1. Authorizations	common (highly diverse)	B / C	selectively, yes (often, declaration only)	many M.S.	a. for companies and/or for individual entrepreneurs b. beyond registration in company registers
2. Quantitative / territorial restrictions	common (22 M.S., highly diverse)	B / C / D	selectively, yes	many M.S.	a. limited no. of providers b. assigned place of provision
3. Legal form requirements	common	C / D	selectively, yes	many M.S.	a. ensuring 'personal liability' b. idem, for specific services
4. Share-holding requirements (often linked to 3., above)	common (23 M.S.)	C / D	selectively, yes	many	a. limiting share-holding by 3rd parties b. min. capital req.s (for professionals, often both a. and b.)
5. Bans on 2nd establishment	few M.S.	B / C	selectively, yes	few	(seems unnecessarily restrictive for purpose, e.g. ski-schools, chimney sweeps, veterinarians)
6. Min. number of employees	quite common (18 M.S.)	B	selectively, yes	quite a few	a. fixed no. (one ; more than one) b. fixed, in proportion to turnover (often for technical certification & testing ; certain education)
7. fixed min. or max. tariffs	many (24 M.S.)	A / C / D	selectively, yes	quite a few	a. fixed tariffs (very diverse e.g. social services, inspection services, some network services) b. max. tariffs (retail network services if dominant ; real estate) c. min. tariffs (regulated professions)
8. Compulsory bundled supply of services	quite common	A / C	selectively, yes	rather few	(social services e.g. elderly; therapeutic equipment+training)
9. Restrictions on multi-disciplinary activities (see also 3. and 4., above)	common (25 M.S.)	B / C/ D	selectively, yes	many	note : Services dir. only allows this for technical certification (etc.) and for professions] a. obligation to exercise activity exclusively b. restrictions on joint activities

Note: The 'restrictive impact' column should be read as follows: A = light, B = more than a nuisance, C = restrictive, anti-competitive, D = severe hindrance. MS = member state(s).
Source: European Commission (2011b).

Table 9 on cross-border restrictions to intra-EU services exchange ('trade') is somewhat different. Member states can be divided in two groups. The first one (the largest group of 24 member states) has implemented the cross-border chapter by means of a horizontal clause in national law reflecting Art. 16.1 on the freedom to supply services across intra-EU borders. Subsequently, all specifications in laws inconsistent with this clause have been removed, unless explicit exceptions can be invoked. This approach must imply a widespread abolition of restrictions and demonstrates the great value of the domestic screening process. In Table 9, the overall effect of this 'horizontal' abolition is perhaps a little hidden, but its significance is likely to be considerable. However, as the table shows, a closer look clarifies that this larger group has three subgroups: one group (six countries) employs the automatic clause, 15 countries have enacted a semi-automatic clause, allowing greater discretion, whereas three countries provide even greater regulatory discretion. One should expect that the prohibited requirements from Arts 16.2 and 16.3, as listed in Table 6, would all be caught by the horizontal clause, unless explicitly maintained (with proper justification). The second group of three member states relies solely on sector-specific amendments to improve market access.

Given these approaches, Table 9 provides details on four sets of cross-border restrictions: the obligation to have an establishment (explicitly forbidden in Art. 16.2, based on CJEU case law), authorisation, notification or declaration duties and a few 'other' requirements. An establishment requirement for cross-border services amounts (in the eyes of the CJEU) to a denial of the very nature of this service activity: cross-border services should not need a local establishment – such a requirement turns it into another mode of supply. Row 3 of Table 9 shows that member states have responded to the Directive with complete abolition in 16 countries and elsewhere for most instances (which leads one to wonder why the crystal-clear CJEU case law was not responded to!). What remains is perhaps understandable for tobacco and alcoholic beverages – although it is puzzling why an authorisation would not do – but hard to grasp for other cases, even though they are relatively few and scattered.

The second set of restrictions relate to compulsory authorisation plus entry in a register. Table 9 observes widespread abolition of this instrument. Yet many instances remain; they are specified for 11 sectors, most of them with appreciable turnover (certification, testing, inspection; construction and crafts; tourism and leisure; private education; wholesale, retail; food and beverages and smaller ones). Table 6 specifies clearly (no. 2 under Art. 16.2) that such requirements are forbidden, unless explicitly provided for in EU law. Thus, the lingering barriers in the 11 sectors listed in Table 9 should be verified with respect to their justification in various EU directives or regulations. Given these restrictions, lowering the costs of doing cross-border services business depends critically on the mutual recognition of the diplomas or competences based in some way on home country control and equivalence. This is not reported but the more widespread mutual recognition, the more the restrictive impact will be reflected in the "B" rather than the "C" indicator, hence, the more competitive the services markets will be.

Table 9. Cross-border intra-EU services barriers: Removal and lingering

Barrier type	**Common?**	**Restrictive impact on cross-border services**	**Abolished, less stringent, simplified**	**Barriers maintained**	
				Frequency	**Main forms**
1. ***Method A***, horizontal law, Art. 16 clause, with exceptions 2. ***Method B***, relying solely on sector-specific laws	--- ---	--- ---	Implies (widespread) abolition of restrictions Abolition via sector-specific amendments	Many MS (3 MS)	*Option 1*: (6 MS) a. Automatic clause b. Exceptions clear *Option 2*: (15 MS) a. Semi-automatic clause b. Some discretion *Option 3*: a. Less general clause, with discretion a. NL does not distinguish between 'establishment' and Art. 16 aspects b. Germany and France focus on sector-specific
3. Obligation to have an establishment [seems against CJEU case-law]	Many MS	D	Often complete abolition (16 MS); abolition significant elsewhere	Few	a. Exceptions for sales of alcoholic beverages and tobacco b. Colourful variation of other exceptions [MS want to control on-site]
4. Compulsory authorisation + entry register	Almost all MS	B / C	Widespread abolition	Many	a. Certification and analysis/inspection services b. Construction, crafts c. Services w.r.t. hazardous substances d. Services w.r.t. animals/plants and national parks e. Tourism and leisure services f. (Often) private education and training g. Wholesale/retail (outdoor markets and specific retail) h. Food and beverages i. Services to legal courts j. Selected business services k. Other (highly diverse)
5. Notification or declaration requirements	Over half of MS	A / B	Selectively, yes	Over half of MS	a. Extremely varied sectors (COM reports 8 sectors, many subsectors + 'other') b. Often at regional level, but selectively c. Most, as a precaution

6. 'Other' requirements					
6.1 Equipment and material with the service	Few MS	A / B / D	(Not reported)	5 MS	a. Extremely varied b. Sometimes spurious justification
6.2 Insurance obligations	Few MS	B	Selectively, yes	(Mainly) 4 MS	Highly varied
6.3 Compulsory dedicated ID card	Few MS	A / B	(not reported)	Few MS	Very selective only
6.4 Other	Less than half of MS	A / B	Selectively, yes	Few MS	Very selective only

Note: The 'restrictive impact' column should be read as follows: A = light, B = more than a nuisance, C = restrictive, anti-competitive, D = severe hindrance. MS = member state(s).

Source: European Commission (2011b).

The third set of restrictions consists of notifications or declarations to the authorities. This measure is typically a precaution on the part of authorities who want to be well-informed in case there is an accident or other reason to control or inspect. It is a light obligation, except when the notification requirements go very far. It occurs frequently (despite selective abolition) and often at the local or regional level. Nevertheless, not all member states impose such requirements. The fourth set of restrictions is a mixed bag. After selective abolition, relatively few member states maintain provisions on bringing along equipment necessary for supplying the cross-border temporary service, on required insurance for cross-border activity (which can be difficult or costly to obtain) and on a compulsory dedicated ID card for the relevant specialisation. Two of these (equipment and ID cards) are in principle forbidden (see Table 6, under Art. 16.2) whilst insurance may be difficult to justify under Arts 19 and 20 of the Directive (see Table 6, bottom row). The overall conclusion is that the Directive, via the screening and mutual evaluation, has accomplished what many years of CJEU case law did not: significant abolition of barriers to cross-border services business. It is speculative to pose the question whether the origin principle – with its limited derogations based on overriding justifications in the public interest as well as its explicit exclusions – would have achieved the same.[24] What one can say, however, is that the screening and unique implementation process, with 'ownership' by all member states, has come a long way in liberalising cross-border services business and thereby serve as a partial though significant substitute of the origin principle.

Tables 8 and 9 provide some detail on establishment and cross-border barriers but are not suitable for zooming in on sectoral issues. For a proper understanding of the economic and practical effects of such barriers, it is indispensable to go beyond the summary information in these two tables and study the sectoral impact in some detail. This is done in a lengthy table in Annex 2. Since regulatory barriers can be fine-tuned in very specific ways, there are several layers of disaggregation one might prefer, and the most detailed one would amount to a huge EU handbook on services regulation applied to all sectors under the Directive and diversified with respect to all EU countries. Of course, a sizeable handbook does not serve the purposes of the present study. In Annex 2, the table focuses on six broad

[24] The draft Bolkestein Directive of January 2004 proposed the origin principle as the basis for Art. 16, mitigated by lists of exclusions and derogations. After ferocious discussions, the European Parliament changed Art. 16 into the present one, affirming the free movement of services and deleting the origin principle. See Barnard (2008), Pelkmans (2007), Chang et al. (2010), Hatzopoulos (2008) and Klamert (2010).

sectors, three of which are broken down into a total of 17 subsectors with specific regulatory regimes. The six sectors are wholesale and retail trade (including ambulant trade, usually in outdoor markets), tourism (with five subsectors), construction and crafts, real estate, business services (with eight subsectors) and private education (with four subsectors). Despite the details presented, the Annex does not cover all sectoral aspects falling under the services Directive, but it probably catches the more important sectors in terms of restrictive regulation. Before we attempt to draw conclusions from this mass of regulatory details, it is important to realise that a singular focus on sectoral barriers ignores a view on what (sub) sectoral activity is *not* restricted. The *overall* perspective must include the sectors covered by the services Directive (see Table 7) but absent in Annex 2 and also incorporate a proxy for the economic significance of the (sub) sectors in Annex 2 that are hardly or not affected by restrictions. Indeed, as noted above as an example, quite a few restrictions have lingered in tourism but the economic activities in the large tourism sector (also cross-border) are only very selectively affected by these remaining restrictions. Finally, even where restrictions seem to go far (impact indicators “C” and “D”), the heterogeneity between member states is often very large, implying that, in many instances, the remaining restrictions only touch upon relatively few bilateral economic relations in the Single Market.

In the (sub) sectors of Annex 2, many barriers have remained despite considerable abolition and simplification. A few statistics may help to grasp the pervasiveness and degree of restrictiveness of the lingering barriers:

i) No less than 51 types of barriers are found for ‘establishment’, such as authorisations and a range of so-called Art. 15 restrictions (see Table 5); note that the various Art. 15 restrictions are seen as only ‘one’ type per sub-sector, except where they are so numerous as to justify disaggregated presentation.

ii) The degree of restrictiveness of these 51 types – still for establishment – was assessed (subjectively, by the authors) in the same way as in Tables 8 and 9; ‘light touch’ (A) is only found twice; ‘more than nuisance’ (B) is counted 48 times; ‘restrictive, anti-competitive’ (C) is observed 42 times; and ‘severe hindrance’ (D) 25 times.[25]

iii) No less than 33 types of barriers are found for ‘cross-border’ supply of services.

iv) The degree of restrictiveness of these 33 types seems, overall, less than for establishment: ‘light touch’ (A) is found 11 times; ‘more than nuisance’ (B) is observed 25 times; ‘restrictive, anti-competitive’ (C) is counted 17 times; and ‘severe hindrance’ (D) is found 19 times. Moreover, several cross-border services are not restricted at all. It should also be kept in mind that, for cross-border services, the administrative cooperation amongst member states is greatly intensified and far more effectively organised (e.g. via IMI[26]) than before – it is expected that this might reduce transaction costs for market access and foster the application of mutual recognition.

[25] For a good understanding, the authors have scored an ‘authorisation’ as “B, C, D” because the degree of restrictiveness can (and does) vary, depending on requirements. Many of the “Ds” in Annex 2 originate from the scores of authorisations.

[26] IMI is the Internal Market Information system of the EU administrations, that is, the Commission, the national and regional administrations and some special governmental bodies. By late 2011, some 11,000 officials were using IMI and this number is rapidly increasing. IMI can be conducted in one’s own language (!) irrespective of the language of the counterpart. Questions may vary from verification of diplomas or specifics of technical laws or the reliability of inspection reports, etc. Usually, answers come in one or a few days, causing a dramatic shortening of procedures, information issues (e.g. posted workers) and authorisations for foreign entrants.

The toughest barriers in the case of establishment consist of (disproportional requirements for) authorisation, combined with restriction of the service provision to regulated professions. In turn, this leads to segmentation along national lines since both depend on national decisions, with the recognition of professional diplomas (and experience) having proved to be particularly difficult and cumbersome.[27] Moreover, both the firm (and manager) and the professional may need authorisation. Such barriers may be understandable (up to a point) in areas such as domestic legal services and tax advice, but become already less 'typical domestic' when it comes to accountancy/auditing, and still less for interpreters. Furthermore, as became more transparent with the recognition of professional diplomas in Directive 2005/36 and its follow-up,[28] there are many regulated professions in the EU (some 800!) and most of them are only regulated in one or a few member states.[29] Because Annex 2 merely zooms in on six broad sectors, many of these narrow cases remain out of sight. But a close reading of the Annex will show that, even in these sectors, there are a number of regulated professions for only a few or less than half of the member states. Whereas there can be little disagreement about regulated professions such as lawyers, auditors, medical doctors, veterinarians, patent agents, debt collectors, architects and a range of technical professions in the construction industry (including crafts, supervisors, elevator technicians, etc.) – although there are serious issues of mutual recognition between member states – this becomes much less clear in instances such as tourist guides (10 member states[30]), real estate agents (12 EU countries), land surveyors (8 member states), employment agents (4 EU countries) and managers of driving schools (4 member states [31]).

Finally, similar to Tables 8 and 9, it is striking to observe the incredible regulatory heterogeneity in Annex 2, even though the table is limited to six broad sectors where regulatory intervention is not surprising (hence, some degree of convergence is to be expected).

4.5 Potential for a further lowering of services barriers

There are essentially two complementary routes to a further liberalisation of the internal market for services, insofar as the horizontal services Directive is concerned. One is the harmonisation route for sectors exempted under the Directive and not enjoying a separate EU regulatory regime. The three important sectors having been 'carved out' of the Directive are patients' rights in cross-border health services, gambling and private security services. The former activity (where patients look for treatment abroad due to quality differences, specialisations or waiting time) has been resolved in 2011 with Directive 2011/24. Gambling regulation – so far national – has received more attention recently and a Green paper was

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[27] For the sake of clarity, the services Directive does not and cannot deal with the professional qualifications themselves. This is a national competence. Therefore, in addition to the barrier list of Annex 2 insofar as regulated professions are concerned, ideally one could also add market access barriers caused by non-recognition or non-equivalent of diplomas and titles of professional qualifications more generally.

[28] See the Green Paper on Modernising the Professional Qualifications Directive COM (2011) 367 of 22 June 2011 and the Commission proposal amending this Directive in COM (2011) 883 of 19 December 2011.

[29] Famous examples, for which market failures cannot be the problem, are photographer (Austria) and barman (Portugal).

[30] Note that most of these do imply risks: cave guides, mountain guides and ski instructors.

[31] Note that driving instructors themselves qualify as a regulated profession in most (17) member states.

published in 2011, followed by a proposed EU framework for on-line gambling services.[32] Private security services have not been resolved and await EU regulation (but seem not to be a priority). All three will be discussed in section 5.5.1.

The other route consists of the follow-up of the screening and mutual evaluation, which has generated much greater transparency about some of the lingering problems. The European Commission (2011a) has proposed three avenues: a performance check, tackling remaining (unjustified) regulatory barriers and a number of facilitation initiatives.

i) The *performance check* seems to have been inspired by the 'market monitoring' exercises conducted by DG EcFin since 2008 (see Ilzkovitz et al., 2008). The core issue is how the single services market works 'on the ground' for users in actual practice. How costly are the barriers in fact (e.g. Authorisations can take many forms and administrations can be slow or apply too much discretion; Do authorities use inter-member-states' administrative cooperation seriously?; Is there any spirit of mutual recognition?; etc.) and how do various EU directives interact with the provisions of the horizontal services Directive, such that legal uncertainty is minimised? This was verified in the construction sector, tourism and business services (all three in Annex 2), sectors with relatively sizeable cross-border services trade. It turned out[33] that not only was implementation at times against the services Directive but in particular the combination of several directives (including 2005/36 on the recognition of professional qualifications and some specific building-related directives) still caused companies or individuals to run into barriers. Remedies include more mutual recognition clauses in specific directives, better enforcement and further tightening on professional qualifications (with a detailed initiative of the Commission on regulated professions in 2013).

ii) *Tackling (unjustified) remaining barriers*, in particular on three issues that are conspicuous in Tables 8 and 9 and even more in Annex 2. The first is the reservation of certain services to regulated professions in cases where the justification is spurious and/or many member states do *not* regulate such professions. When providers from many EU countries, where such activities are not reserved, wish to establish or provide cross-border services in EU countries having such reservations, they may find themselves excluded; mutual recognition will rarely be allowed. It might also affect their business model when trying to operate on an EU-wide basis. Of the 800 regulated professions in the EU, no less than 25% is regulated only in a single member state, and many more only in a few, leaving severe doubt about the justification under EU law. Of course, it must imply that numerous professions will lose the comfort of operating in a protected business environment and this is bound to be resisted, perhaps fiercely. A special case is the construction sector where, at times, very similar technical competences of a person in country F to the requirements of a technician in the same field in country G nevertheless do not lead to recognition due to extremely specific

[32] The Green paper on on-line gambling in the internal market, COM(2011) 128 of 24 March 2011, COM(2012) 596, 23 November 2012, Towards a comprehensive European framework for online gambling, accompanied by a Commission Staff Document with elaborate consideration of the grounds for regulation and supervision at the national level under proportionality, and the restrictions on free movement and the right of establishment, SWD (2012) 345, 23 November 2012.

[33] See Commission Staff Document SWD (2012) 147 of 8 June 2012 on the Results of the performance checks of the internal market for services.

definitions of 'regulated' professions.[34] Clearly, such extreme market fragmentation goes against the spirit of mutual recognition. Knowing that a building or major work will require many technical specialists, it will become next to impossible to conduct cross-border business except by hiring local workers. The second issue concerns legal form and capital ownership requirements for establishment and cross-border business whilst the third one consists of insurance requirements for cross-border business (especially when a company is already insured at home). The first two (Art. 15 requirements, see Table 5) can be effective barriers, and may even affect the business model; in cross-border they might make the provision impossible. As noted before, the insurance condition may not only be superfluous, it might be very costly (or even impossible) to obtain for cross-border business (e.g. when the market for such activities is too small).

iii) A number of *facilitation measures* are considered by the Commission. These include an annual guidance document to help member states applying properly the horizontal clause (reflecting Art. 16), a consolidation and tightening of the notification system in the Directive on new regulatory initiatives on services by member states (much like the 98/34 Directive does for technical barriers in goods markets, see Pelkmans, 2007 and Correia de Brito & Pelkmans, 2012) and a further assessment of the means of redress for consumers and SMEs.

It should be noted that this approach was maintained in 2012 but widened by announcing a European Retail Action Plan and greater focus on the large and growing sector of Business Services.[35]

5. Barriers in regulated services markets, outside the services Directive

Concentrating too much on the liberalisation under the services Directive can be quite misleading for an economic appreciation of the functioning of the EU internal services market as a whole. This is true both for regulatory and for economic reasons. In fact, *EU regulated* services are as important, if not more so, for cross-border intra-EU exchange! Studying barriers to services exchange in the EU implies studying barriers in the EU regulated services markets as well.

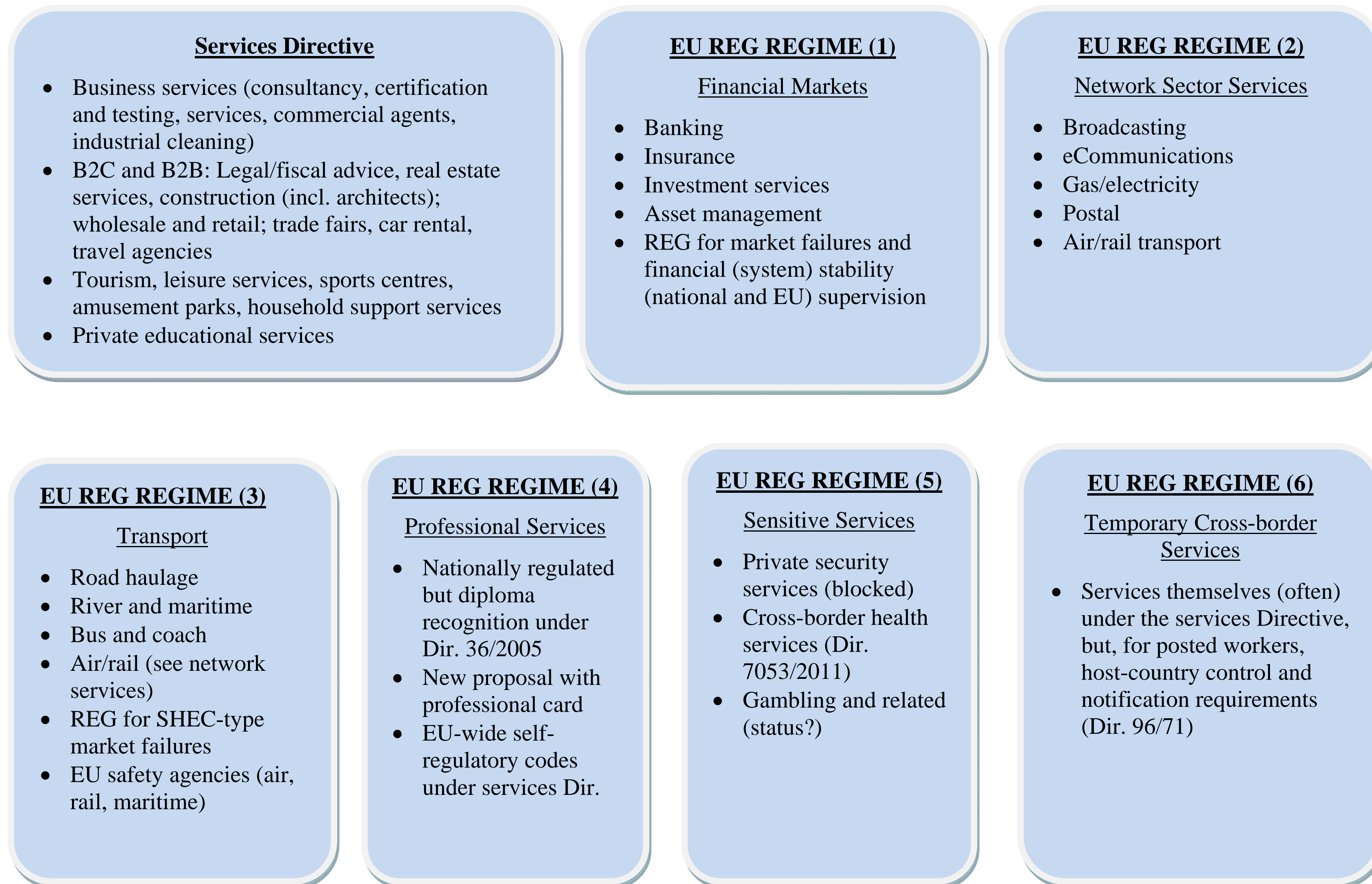
The economic reasons are not difficult to see. As shown in Mustilli & Pelkmans (2012), intra-EU trade in services is dominated by services under the Directive (63%) – still, one-third is outside it – but intra-EU FDI in services is dominated by regulated services such as financial services (61%) and network industries (10%). In terms of EU GDP, the four regulated (market) services categories generate some 20%.

The regulatory reasons can be understood from Figure 1 which gives the full panorama of (non-government) services in the EU internal market. In this stylised view, the services Directive occupies the upper left box, governing the internal market regime for the services listed there (see also section 4).

[34] The European Commission (2012, p. 7) gives the example of an 'electrical technician' who is prevented from executing highly specific activities in his field (in the other country) because they are reserved for 'electrical equipment installers'.

[35] In COM(2012) 261 of 8 June 2012 on the implementation of the services Directive. For Business Services, a High Level Group on Business Services has meanwhile been appointed, expected to come with detailed recommendations.

Figure 1. Internal Services Market: Sectors under the services Directive 2006/123 and EU regulatory regimes



Most of these services are lightly (or sometimes, not) regulated at EU level. They may be regulated at national level and Directive 2006/123 disciplines this regulation whilst explicitly forbidding a range of impediments to market access, whether cross-border or via establishment. For some of these services, complementary EU regulation may facilitate the working of the Single Market in the presence of potentially fragmenting national regulation, the most prominent example being the recognition of diplomas for (nationally) regulated professions. The recent EU attempts to make progress in this difficult area are incorporated in Figure 1 in one of the other boxes, but they interact with the upper left box.

Figure 1 clearly shows that the internal services market consists of six sectoral EU regulatory regimes, besides the services Directive. Again, this renders it indispensable to discuss these special regulatory regimes and ask the question what the remaining barriers are, if any, in these domains. In none of these six regimes has EU regulation (as well as cross-border liberalisation and EU competition policy where relevant) proceeded so far that all barriers to services exchange have been removed, although one sector (transport) has come rather far.

For the present purposes, it is neither possible nor desirable to analyse in full detail these six regimes and the remaining barriers. We have opted for an intermediary level of specification which is concrete and practical enough for underpinning an eventual economic assessment of remaining barriers. Such an approach requires a separate discussion of each one of the six regimes, because they are all distinct and involve specialist knowledge about sectors and market failures.

5.1 The EU financial markets regime and remaining barriers

Nowadays the EU financial markets regime is advanced. Yet, two types of ‘barriers’ to financial services exchange remain: design-related barriers and barriers due to the failure to ‘complete’ the internal financial market based on removal of obstacles between the member states. For a good understanding, a brief digression is unavoidable.

Before the financial crisis starting late 2008, the EU made three attempts to remove ever more barriers between member states and thereby deepen and widen its internal financial services and capital market. The first one during the 1970s, focused on the early implementation of the right of establishment (no more than a beginning for barriers to unhindered establishment and no solution for cross-border services). The EC-1992 period brought a breakthrough with the second banking Directive (and some other directives on e.g. on large exposures and solvency) and related EU regulation for insurance and investment services, besides the prohibition of exchange controls. The third generation consisted of the Financial Services Action Plan (FSAP) (with the special Lamfalussy procedure of delegated implementation legislation), a total of 43 directives and regulations between 2000 and 2006.

The FSAP was initially regarded as a success, despite (mainly) academic criticism on some fundamental features and its ‘light touch’ regulatory approach. The criticism of its design turned out to be correct, although the consequences and scale of the subsequent crisis were foreseen by almost nobody.[36] The important weakness, perhaps a fatal flaw, was the combination of a ‘too-light’ risk approach, with the absence of any common authority and monitoring of EU-wide (or eurozone-wide) financial stability. This systemic flaw resulted

[36] There *have* been authoritative, early warnings at the highest level of governance of the financial and monetary system. Prof. Rajan (2005), then Chief Economist of the IMF, warned the central bankers, meeting in Wyoming in their annual informal retreat, in a well-argued paper but he was conveniently ignored or belittled.

from two interacting sources of inhibition: i) supervisory authorities were national and their soft cooperation at EU level was totally inadequate to deal with instabilities or large insolvencies once they would occur (with a complete failure to address the 55 large financial conglomerates working cross-border in the EU); and ii) the lack of preparedness to centralise (especially supervision) at EU or eurozone level even where the economic case was strong. The upshot was that, after 10 years of a successful eurozone, the absence of EU supervision and of a common, effective bank resolution system (with joint funds) together with the 'light' risk approach, allowed contagion to turn into unexpected, massive threats (even spilling over to sovereign bond markets, hence affecting ratings of different EU countries), prompted several internationalised banks to be broken up along national lines and caused enormous national state aids to national financial institutions, which should never have happened in the first place. All three can be seen as severe *design failures* of the internal market but just as much as *barriers* to intra-EU financial opportunities. The internal market had become far more risky in the absence of a truly Europeanised regime for bank resolution, also cross-border. The EU lacked a financial stability regime (including the absence of a lender-of-last-resort function), for dealing with a systemic failure. The ensuing, dramatic worsening of the fiscal imbalances of the member states led to the emergence of extreme risk-pricing and interest disparities in sovereign bond markets[37] and the drying-up of the European interbank market due to a lack of trust.

The fourth regime (late 2008-12) constitutes a brave attempt to address all these issues. Supervision has been consolidated, to a degree, in three EU agencies (for banking, insurance and investment services), a European Financial Stability Board has been founded (with explicit links with the supervisors), a more sophisticated risk-based approach to banking has been enacted (with higher capital requirements once more risk is taken), alternative investment funds (or, rather, their managers) have become monitored and lightly regulated, credit rating agencies have become regulated such that conflicts of interests cannot easily occur, bonuses and remuneration questions have been addressed in corporate governance of banks in modest ways, several directives have been revised (e.g. for investment services – MIFID – and mutual funds) and bank resolution proposals have been tabled, although the central sticking point (burden-sharing for international banks or joint funds for this purpose, and prior rules to execute the funding, so as to avoid emergency negotiations in weekends) is not yet fully resolved. This paper will not discuss all these elements. The fourth regime is no doubt much better than the third, but the persistent query by academic observers and think-tanks remains: Is it enough for the internal market to be crisis-proof? Is the better functioning of the internal financial market guaranteed, once the crisis is over? Will there no longer be design-barriers to EU financial integration? The answer to these queries hinges on the final result of the bank resolution regime and the agreed burden-sharing as well as on the eventual degree of centralisation that the EU can accept.

The other query for this paper is: Has the fourth regime also been capable of clearing all intra-EU barriers out of the way? The answer is: There are still some significant barriers left. At the moment of writing, the prevention of re-emerging failures of the internal financial market takes absolute priority for the EU. Removing the remaining barriers is now a lesser problem. But the IMF does not see it that way. Quite the contrary, it regards further deepening and removal of lingering barriers as a handmaiden for the exit from the crisis. Its view on

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[37] In the ten years since the euro decision was taken (May 1998), financial markets behaved "as if" the respective national fiscal imbalances did not matter for risk pricing of sovereign bonds of eurozone member states, despite considerable differences in debt ratios. By the autumn of 2008, this had altered radically.

today's barriers inside the EU is revealing: "The crisis in Europe was prolonged by the incomplete integration of the financial system. … (H)ome bias in portfolio allocations, securitisation is very much a national affair (for example, no uniform mortgage contract exists) and cross-border retail banking is virtually non-existent; cross-border mergers and acquisitions are still limited." It also lambasts the mindset of the European financial elite, private or public:"…the desire to maintain national champions, … take advantage of regulatory and supervisory arbitrage and retain full national accountability for explicit and implicit guarantees" (IMF, 2011, pp. 69-72). These problems may have different roots: for mortgages,[38] a key issue is national tax deductibility of (some of) the interest paid; for retail banking a major problem is the nationally quite distinct consumer protection regimes (besides the low switching rates in retail banking all over Europe which may forever marginalise a new entrant); for mergers and acquisitions, corporate law is only partly Europeanised and tax issues differ between member states; and, finally, the taste for national champions will not become sour before a truly European regime (including common funds) of bank resolution will be in existence. The removal of these four 'barriers' can only be expected if and when the other, often sensitive, policy domains mentioned here, are addressed with the better functioning of the single market in mind.

5.2 Network industries and lingering barriers in the internal market

Although a lot has been achieved in opening up the seven relevant[39] network industries (broadcasting, postal, eCommunications, gas and electricity, rail and air transport), there are some weaknesses in three sectoral internal market regimes but severe flaws in four others (preventing an internal market from coming into being). The discussion below has to be succinct and focuses merely on the identification of the main issues.[40] Table 10 provides an overview employing key words only. The table demonstrates that there is no genuine internal market for network industries' services in four out of seven industries. In broadcasting, postal and air transport, on the other hand, the problems are relatively minor and some are known to be temporary anyway.

The barriers to EU-wide services exchange in eCommunications, electricity, gas and freight rail[41] are formidable. This is not to say that the gradual liberalisation in these network markets has not already had some pro-competitive effects and prompted efficiency gains (see European Commission, 2013). The point is simply that, in order to reap the full economic gains from intra-EU market integration, these formidable barriers will have to be overcome. It

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[38] Mortgage loans in the eurozone can now be contracted cross-border without any exchange risk; outside the eurozone, to engage in euro-denominated mortgage loans seems too risky in this respect.

[39] 'Relevant' refers to EU-relevant, in other words, with actual or potential cross-border economic intercourse. Some network industries are local (e.g. urban transport) and other ones have virtually no cross-border trade (such as drinking water).

[40] For detailed economic surveys of the single market of network industries, see Pelkmans & Luchetta (2013) and European Commission (2013). The latter also provides a good summary of the current EU regulatory regime in the more 'difficult' network industries.

[41] Note that the case for a competitive EU-wide *passenger* rail market is far weaker and selective. The demand for cross-border (long distance) passenger rail is relatively small (also given intermodal competition) and there are limits to (efficient) entry in this market. Freight rail, on the other hand, is by nature usually cross-border in Europe where almost all countries are relatively small in territory. Freight rail can be competitive, for the typical goods it can carry efficiently (e.g. less value, more weight; and/or goods not under just-in-time systems), starting from 400 – 500 km and becomes attractive for commercial shippers for (say) distances above 1,000 km. Of course, this still depends on efficient intermodal hubs and business models.

is probably hazardous to try to 'estimate' the magnitudes of such economic gains, given the complicated nature of the barriers indicated, and the dynamic effects that the future absence of these barriers is likely to engender, but it seems plausible to expect very considerable long-run gains.

Take eCommunications (Pelkmans & Renda, 2011), which is characterised by huge intra-EU price disparities in the 11 most important eComms services, ranging from a few hundreds of percent to several thousands. It does not require much fantasy to expect great economic gains if price disparities would be forced, by genuine EU-wide competition and consolidation of the telecoms industry, down to a range of (say) 'only' 100% [still wider than in many other sectors]. The problem is that the EU requirements to achieve such consolidation and price convergence are *unlike* the typical barriers under (say) the services Directive or, for that matter once upon a time, in EU goods markets. It would require an overhaul of the EU approach in this sector away from giving so much power to NRAs, allowing much more centralisation (that is, radically upgrading BEREC and endowing it with centralised functions, above all, to ensure a proper functioning of the internal eComms market) and revising EU regulation (including licensing) to accommodate that. This should of course be complemented by EU competition policy.

This is not the place to elaborate on such ideas. But it goes without saying that these changes would amount to a revolution in eComms circles and – going by the resistance of NRAs and the national governments to the emergence of a very weak BEREC in 2009 – are bound to be fought by vested interests. Another pointer of the untapped potential of the internal eComms market is the splintering of the EU's telecoms business: whereas the US has five to seven big operators, the EU has (depending how one counts) several hundred up to over one thousand or more. This is only sustainable because fragmentation is allowing numerous niche positions in national markets which would, for the most part, be wiped out by competitive pan-European operators forcing much higher efficiency.

With due respect to the considerable sectoral differences in gas, electricity and freight rail, the basic problem of realising a genuine internal market without barriers is quite similar. All three incipient internal markets suffer from major infrastructural problems, combined with very high national concentration ratios (i.e. too little entry) and a lack of centralisation, in particular the absence of a common EU regulator. The most profound problem is found in rail: the transformation of and investment in rail infrastructure towards a suitable and modern (e.g. signalling and interoperability, allowing a higher speed) set of European freight corridors, with routine priority for freight rail (minimising the costs of dual-use), with many intermodal hubs and without suffering from frontier stops or other problems such as lack of traction. These major problems are exacerbated by highly distortive and disparate access pricing policies at national level which complicate freight efficiency since freight routes tend to go through three, four or five countries with radically different charges. The lack of an EU regulator, or even an autonomous Agency,[42] further weakens the EU internal market regime for rail.[43]

[42] ERA (European Rail Agency) deals solely with technical safety and interoperability questions, not with ensuring market conduct, slot allocation, access pricing, proper implementation or other questions related to the proper functioning of the internal rail freight market.

[43] Some further issues of the lack of competition and efficiency in European rail are discussed in Crozet et al., 2012.

Table 10. Barriers in the internal market for network industries

Sector	Impact	Nature of barriers
Broadcasting	Light	Broadcasting Directive 2007/65 based on origin ('place of transmission') principle, so genuinely free; technology (especially cable) and copyright still fragments the internal market to some extent; webcasting only weak substitute
Postal	Light	Postal Directive 2008/6 implies full liberalisation by 2011 (for some countries, 2013); (limited) price regulation, wage setting for full-time and part-time postal workers and (limited) discretion for national postal regulators may still segment markets along national lines; however, most postal is B2B and B2C (e.g. direct mail), email is powerful substitute (no barriers) and parcel mail highly competitive EU-wide; Reims-V (quality guaranteed cross-border mail at agreed, cost-reflective prices) agreement promotes market integration, but ought to be flexible and open
Air transport	Light	Fully free for intra-EU air services (cargo, passengers); some lingering restrictions due to bilaterals with (some) 3rd countries; splintered air traffic controls are on the way out with SESAR-II and new IT infrastructure
Electricity	Severe	3rd package (2009) improvement, but insufficient; cross-border interconnectors too often congested, despite greater efficiency with power exchanges; wholesale markets not (yet) competitive enough; national HHI indices far too high; lack of conducive investment climate given formidable investment needs (including EU-wide grids and replacement of power stations) and uncertainty about sustainability constraints (such as renewables and the low price of carbon); ACER Agency too weak to ensure genuine internal market (given NRAs)
Gas	Severe	3rd package (2009) improvement but insufficient; EU gas networks unfinished; national HHI indices even higher than in electra; severe gas security-of-supply problem (now reduced by LNG and possibly shale gas); gas hubs (wholesale) still few and too illiquid, though growing rapidly; gas exchanges too 'thin'; fragmentation profound e.g. due to medium-run capacity reservation of pipelines and storage; investment incentives via exemption of TPA show dilemma between security of supply and intra-EU competition; ACER too weak to ensure a single market (see electra) but development of 'network codes' (under way) would be pro-competitive and improve the single market
eCommunications	Severe	Success of EU telecoms (eComms) due to interaction of technical progress and market liberalisation; hides the fact that liberalisation is largely 'national', managed by NRAs based on EU regulation (and some competition policy); no such thing as an eComms Single market, shown by huge price disparities, lack of convergence in applied rules, no EU-wide service providers, little consolidation of industry and a stubborn broadband gap; BEREC 'Agency' distinctly weaker than ACER – NRAs are stumbling block to single market; series of other barriers to a single 'digital market' currently being addressed (such as more EU-oriented spectrum programmes, pan-EU licensing for on-line rights management and harmonised numbering to enable EU-wide provision of business services); investment incentives in advanced networks problematic, might harden fragmentation
(Freight) rail	(Very) severe	Economic case for EU-wide freight rail powerful, yet the barriers are the most severe of all network industries; overriding problem is the unsuitable 'installed base' (of infrastructure) which is extremely expensive to overcome and will take decades; key infra problems: networks built as 'national', hence, cross border 'missing links', 'dual-use' tradition in Europe (adding 40% to costs), huge NIMBY issues for new infra, long European freight 'corridors' require many costly adaptations at many levels and, given EU density, difficult to accomplish, interoperability questions (ERA Agency is purely technical) and a need for many efficient intermodal

		hubs; moreover, profound investment incentive issue as the pan-European uncertainty about freight rail competitiveness lingers on, creating a vicious circle; besides infra, two other serious constraints, which will take time as well: the business models and mentality of freight rail companies in Europe have to be transformed radically, and, national freight access (to track) charges vary by hundreds of percent (deeply distortive); although national regulators have to be 'independent', conflicts of interest (with the incumbent) are not fully excluded; there is no EU-wide regulator for general market access, slot allocation and track charges; implementation of several rail packages by member states is seriously deficient

Note: NRA = national regulatory agency; TPA = third party access; LNG = liquified natural gas; ERA = European Rail Agency; ACER = EU Agency for electricity and gas; BEREC = EU Body for Electronic Communications (formally, not an EU agency).

In electricity and gas, the natural monopolies (transmission and distribution networks) have gradually been subjected to a stricter EU regime. Nevertheless, also here the infrastructural questions are paramount as Table 10 describes. In electricity several cross-border interconnectors suffer from congestion permanently and investment incentives to build new ones are subject to improvement, to put it mildly (Kapff & Pelkmans, 2010). In gas new pipelines *can* be exempted from TPA (third party access) under strict conditions since a temporary exclusive use may serve as an incentive to attract investors. Both sectors face enormous investment challenges in the next two decades anyway, both in infrastructure and power stations. Moreover, in electricity there is the non-trivial question of how to accommodate renewables such as wind power (which is irregular) and this issue may have negative externalities for neighbouring countries' networks as well (e.g. Germany causing problems for adjacent countries with either too much windpower in a particular period during a day or an acute shortage at other times. In both sectors, there is an EU Agency (ACER) that is advisory (it can take highly technical decisions in some cases and serve as intermediator between NRAs as well) whilst also stimulating and supervising the ten-year investment plans on infrastructure (executed by ENTSO, the association of national transmission systems operators). However, it cannot ensure the proper functioning of the internal market, far from it.

5.3 Barriers in the internal market for transport services

The present subsection on transport will not deal with air and rail transport since this is discussed in subsection 5.2. The internal market for transport in the other four modes (road haulage, river transport, maritime – especially coastal shipping – and bus and coach transport) is functioning quite well. In 1985, the CJEU convicted the EU Council of Transport Ministers for a "failure to act" to implement the common transport policy as the treaty proscribes. Since that year, the EU has undertaken a steady liberalisation of the four modes, including cabotage,[44] supplemented by a relatively modest set of common rules for safety, environment and social concerns (e.g. maximum hours of driving a day for international road haulage). EU competition policy has complemented this where necessary, for example by lifting the exemption for international liner conferences in maritime. The EU has also attempted to introduce unhindered access to and more competition in certain harbours which use a

[44] The only restriction left is that cabotage rights hinge on the condition of the truck having previously operated an international transport service in the EU.

restrictive system of assigning cargo for handling, but with mixed success.[45] Apparently, there are also issues of the (non-)transparency of state funds for port development affecting negatively inter-port competition in the internal market.[46] The lingering policy issues in EU transport are, on the whole, no longer found in intra-EU barriers but in the facilitation of intermodal transport, a range of environmental issues and 'green transport', appropriate road pricing, standardisation of electronic toll gate systems (indeed, an internal market issue but more an irritant), a range of innovative solutions for infrastructure as well as transport management systems and some cross-border corridor questions such as long tunnels in the Alpine regions and 'missing links' between national road systems.

The ambitious strategy to arrive at a Single European Transport Area[47] emphasises mainly the further 'greening' of transport (for environmental reasons and on grounds of energy security), the aggressive development of innovative new technical (including ICT) and interoperability solutions, a transformation towards common multi-modal systems for long-distance transport (which requires huge investments, common standards and a great deal of coordination) as well as Europe-wide freight rail corridors,[48] a maritime 'Blue Belt' of free movement around the EU and many proposals on safety and passenger rights, etc. This more 'integrated' approach (integrated, that is, between transport modes and also integrated in the sense of a genuine level-playing field on pricing for the internalisation of externalities such as pollution, accidents, noise and congestion) has profound and long-term implications.

For the present purposes, this prompts the following questions: What are the real 'barriers' in the internal market? What are the 'distortions'? Where to draw the line? Clearly, removing classical market access barriers is hardly the issue anymore in EU transport (with the exception of some minor cabotage questions, harbour access in only a few instances and a few rail issues like single EU vehicle-type authorisation by the rail agency ERA), except for one lingering question. In maritime transport, the handling of customs documents, inspections and other treatment upon arrival in EU harbours is identical between EU-originating ships and vessels coming from other parts of the world. In the recent Single Market Act II,[49] the Commission has finally committed to propose arrangements not substantially different from intra-EU transport. But classical access barriers aside, the 'technical efficiency' of the exploitation of the Single Market can be enormously improved, once the coordination, interoperability, large and multi-annual investments, transport management systems and logistical innovations have been upgraded and adapted. Distortions like sticking to different cost methodologies for internalisation, primarily due to protectionist reasons or fear of adjustment, or a lack of coordination or of infrastructural investments, which would seem to appear as 'barriers' later on (because congestion or bottlenecks hinder smooth EU-wide transport, or incompatibilities) could all be regarded as the 'new' obstacles to an efficiency-improving, modernised truly European transport system. This leads to the perhaps somewhat curious conclusion that the near-absence of classical market access barriers – a victory in European market integration – would be a mistaken and far too narrow perspective for the assessment of the internal transport market of the future.

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[45] The 2005 draft Directive for access rights to EU ports was rejected by the EP after violent protests in Strasbourg and a soft law approach has been used since.

[46] European Commission (2013, p. 18).

[47] COM (2011) 144 of 28 March 2011, White Paper, Roadmap to a Single European Transport Area.

[48] See for detail COM (2010) 474 of 17 September 2010, The development of a Single European Railway Area.

[49] Single Market Act II of 3 October 2012, COM (2012) 573.

5.4 Barriers in the internal market for services of professionals

As noted before, there is no EU regime for the substantive regulation of professionals and the supply of their services. Having said that, one should immediately add that 'mutual recognition' of diplomas has been attempted early on, in particular for the professions.[50] For decades, however, negotiations for architects, medical doctors, pharmacists, accountants, lawyers, etc. were hijacked by closed and protective lobbies of professionals from the member states, which agreed on interpreting 'mutual recognition' as a form of 'maximum harmonisation'. This meant that the heaviest possible requirements for recognition would prevail, complemented by national aptitude tests with lengthy preparation, thereby rendering market access between EU countries extremely small, if not 'residual'. This boiled down to total protection and a complete lack of pro-competitive entry from other EU countries. It goes without saying that this 'harmonisation' has nothing to do with either 'mutual recognition' or with its objective, that is, least-cost solutions for effective market access without undermining the SHEIC objectives behind the regulation of professional services and their suppliers.

Since 1989, a new approach has been initiated, inspired by 'mutual recognition' in goods and some services, which has culminated in easier recognition of a range of professions (like teachers) during the late 1990s. Meanwhile, medical and para-medical professions enjoy a mobility-friendly regime of automatic recognition. No less than 15 separate directives for many well-known professions (except lawyers and commercial agents) were consolidated in an omnibus Directive 2005/36. The services Directive 2006/123 also matters, although it is complementary to the professional qualifications Directive 2005/36. It matters because it imposes far-reaching inter-member-state administrative cooperation (crucial in the case of recognition of many diplomas from no less than 27 countries) and Points of Single Contact (idem), for example.

In 2013, a summary of the EU system of recognition of professional qualifications is as follows:

a. In seven professions, *harmonisation* of minimum (training) requirements has been accomplished: six in health (doctors, nurses, dentists, midwives, veterinary surgeons and pharmacists) plus architects. Such harmonisation leads, by definition, to *automatic recognition*. There are lingering concerns about language tests given the preoccupation of patients.

b. *Mutual recognition* of qualifications applies, in principle, to all other professions, some 800 in the EU (although no less than 43% of those are in health or are health-related), under the so-called 'general system' (dating back to 1989); such mutual recognition is of course conditional on certain requirements, but the idea is that *equivalence* (of professional competence) prevails, not identical requirements in training, etc. Apart from lawyers and commercial agents (see below), all the rules are incorporated in Directive 2005/36.

c. The professions in craft, commerce and industry also enjoy automatic recognition, but here, of professional *experience.*

d. There is a special regime for lawyers and one for self-employed commercial agents (Directive 86/653/EEC; the reason being a matter of civil law, normally not an EU matter, about the relationship between the agent and the principal).

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[50] Note that the term 'mutual recognition of diplomas' has already been written into the Treaty of Rome. This provision was never changed; see Art. 53, TFEU.

The internal market for professional services is still rather restricted, despite the significant improvements recently made. In Tables 8 and 9 as well as in Annex 2, one will observe that numerous problems still arise in the internal services market due to reservation of activities to certain regulated professions. On the other hand, there are several signs of greater cross-border activity, whether establishment or cross-border temporary services. First, data show that the system begins to work. Between 1997 and 2008, 70% of recognition requests succeeded, 13% were not settled because e.g. candidates were still following a course, 9% were successful only after a required adaptation period and 8% were denied.[51] By spring 2011, some 200,000 EU citizens had been seeking recognition of their qualification in another EU member state, but these Commission counts are known to be an underestimate.

Figure 2 provides empirical evidence about the sectoral composition of these mobile professionals. For those with harmonised training requirements, the health professionals take the lion's share (21%), with architects assuming only 2%. This might be interpreted to mean that this system works for health (if harmonised).[52] Would the mere 2% imply that it does not seem to work for architects? Not necessarily. There are far fewer architects than health professionals, to begin with – if the propensity to be mobile across intra-EU borders would be the same between health and architects, the number of architects would still be much smaller. Moreover, one should realize that, for architects, it is generally much harder to build up a clientele of their own in another country – it would presumably be easier when contracted as an employee. As to other professionals, mobility is significant for teachers (27%), health professionals not covered by harmonisation (23%), craftsmen and transport professionals.

For the other groups, one might suspect that lingering barriers remain important. The European engineers have recently introduced an EU-wide professional card, which allows almost immediate mutual recognition given the data on the card and the electronic support from the relevant institutions in each EU country. Lawyers have a natural barrier in that local language and profound knowledge of national laws are an obvious prerequisite for successful mobility, unless their legal services are directly linked to services to multinationals. Moreover, becoming a member of the national Bar tends to be restricted by considerable 'stages' (traineeships) or other requirements plus a strict test, which in principle may be non-discriminatory but still signify a tough barrier to overcome for many non-locals. Such barriers are at times perhaps a bit too heavy (or take too long) but broadly speaking unobjectionable. For accountants/auditors/tax advisors, Tables 8 and 9 and Annex 2 demonstrate that barriers here are high. One also has to take into account (which is not mentioned in Tables 8 and 9 nor in the annex) that, for accounting/auditing, restrictions often apply to individual auditors as well as to accounting firms![53] However, the enormous fragmentation in accounting inside the EU internal market also hinges on other fundamental factors, which is signalled by the country-by-country set-up of even the largest four accountancy majors. The principal reasons

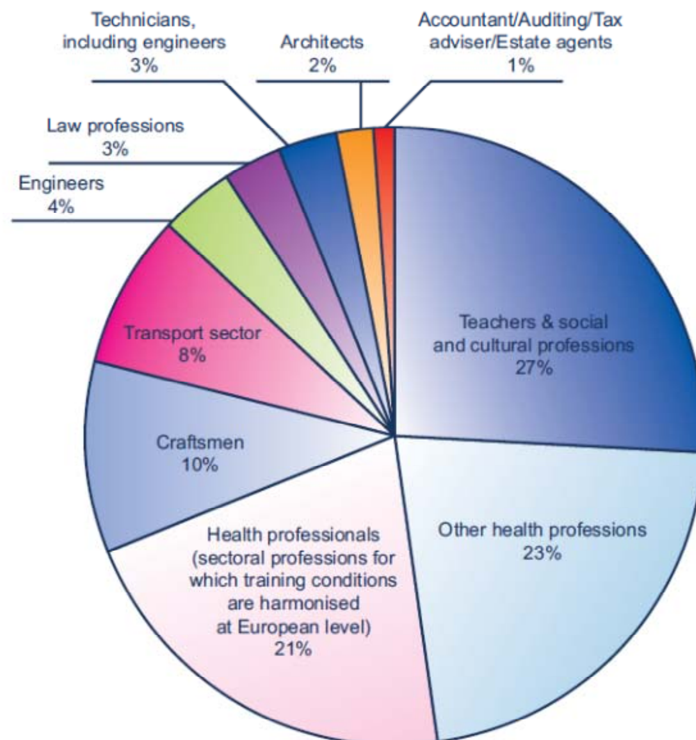
[51] Internal Market Scoreboard, July 2010, pp. 30–31.

[52] This seems consistent with recent empirical work by the European Observatory on health systems and policies. See Wismar et al. (2011). They find that in half of the EU countries foreign doctors make up more than 10% of the EU workforce, with 43% for the UK (also non-EU), 25% for Belgium and 13% for Austria. As a share of the workforce, foreign nurses make up 28% in Italy, 15% in the UK and 14% in Belgium. Foreign dentists make up 43% of the Finnish workforce, 41% in Austria, etc. The flows are mainly east-west in the EU and have declined after the 2004 and 2007 accessions. For example, the peak of inflows into the UK from the new EU member states was in 2005 with 1,792 doctors and 305 midwives and nurses; by 2008 it was down to 970 doctors but up for nurses and midwives to 932. The study does not report serious barriers to recognition.

[53] Readers wishing to peruse a quick survey of how complicated this is are referred to Pelkmans (2006), Case Study 7.1, pp. 130-131, on accountancy services in the internal market.

behind this curious structure are the question of liability (with significant differences in legal regimes between member states, besides distinct cultures in this respect) and the decreasing availability of professional indemnity insurance for large trans-national audit assignments.[54] However, both our tables + the Annex as well as the data in Monteagudo et al. (2012) indicate that some abolition of barriers has taken place as well as considerable reduction of restrictiveness in both accounting and the area of tax advisors.

Figure 2. Cross-border mobility of professionals 1997–2008



Note: Percentage of decisions (positive or negative) for different sectors based on information from member states and EEA countries and entered into the database up to 02/2010. CY, CZ, EE, ES, PT and RO have not provided figures for 2008 yet on recognition of qualifications.

Source: Internal Market Scoreboard (European Commission, 2010).

Another attempt by the Commission is its proposal[55] to modernise the approach of 2005/36 further. One (proposed) obligation would be for member states to (re)evaluate the list of regulated professions in their country, see what regulation is perhaps not necessary, and, if maintained, to explain to the Commission and other member states what the overriding reason of the public interest is that leads the government to uphold the rule.[56] If this proposal would be adopted, it would undoubtedly generate fascinating debates between member states (but also public debates) about the merits of such regulated protection in many instances. The end result is likely to be easier market access and fewer barriers. A Commission report is expected in 2013.

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[54] A detailed and insightful analysis can be found in FEE (2008).

[55] See COM (2011) 883 of 19 December 2011 and the Impact Assessment under SEC (2011) 1558 , same date.

[56] Since all member states would have to notify this, a kind of mutual evaluation between member states would emerge. Although the Commission employs language like "to simplify" their regulatory approaches, while serving "transparency", it is obvious that such an exercise might be seen as rather sensitive by some professions.

Nonetheless, the failure rate of 30% and experiences with SOLVIT and the CSS (Citizen Signpost Service)[57] demonstrate that the problems with professional qualifications are numerous. The proposal addresses some of the issues, mostly related to modernisation (of harmonisation, for example) and lowering transaction and information costs (via an EU professional card system, intense inter-member state administrative cooperation and a reform of rules for temporary services provision by professionals). As far as administrative cooperation is concerned, which is crucial in this domain as SOLVIT has shown, the use of the IMI (Internal Market Information) system[58] is proposed to become obligatory for all matters concerning recognition of professional qualifications. This may also enhance legal certainty and speed whilst lowering transaction costs.

As this subsection shows, it is clear that intra-EU mobility of professionals is easier today than, say, two decades ago. Indications to this effect (see before) are in the qualitative description of considerable improvements in the EU recognition regime and in the rather large actual cross-border intra-EU flows of professionals as documented between 1997 and 2008. Nevertheless, it is still extremely difficult to come up with appropriate counts or measurement of the remaining barriers in the internal market for professional services and the actual or potential economic impact of such barriers. One of the proxies to get around this lack of direct observation or plain statistics of barriers is found in quantitative techniques which start from the restrictiveness of national regulation (e.g. the PMRs of the OECD, see section 6).

For this subsection, it is interesting to provide a prelude on this analysis following recent OECD work. Restrictiveness of (here) the national regulation of professional services (including who can perform them, given the conditions to become a professional in a particular field) leads to two kinds of 'barriers'. First, a relatively restrictive regime for professionals reduces entry into that specific market, both for locals and for non-nationals (from the EU). Nevertheless, the efforts and/or costs in meeting the conditions are typically less for nationals than for non-nationals, except in special cases (e.g. when having studied in a host country where one wishes to stay). Suppose that all member states have an identical regime for professional services X but this regime is relatively restrictive.[59] If so, such a set of identical national regimes is nevertheless likely to restrict cross-border flows of professionals (for establishment) more than it would restrict domestic entry; in other words, it induces a 'home bias'. Second, in actual practice, these national regimes are of course anything but identical. Indeed, they are different in many ways and the overlap differs time and again in any bilateral comparison. Such heterogeneity matters too (as dealt with more systematically in section 7). Thus, if one follows successfully the education plus training for profession K in country A, not knowing yet that, later, one might seek establishment in country B, one might incur costs of adaptation that may well differ depending on which country B actually is. If the professional is an individual, heterogeneity is less relevant, because the professional merely

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[57] For SOLVIT, see its 2010 report and the strategic review of SOLVIT [Reinforcing effective problem-solving in the Single Market, of February 2012] (both at: ec.europa.eu/solvit); and for CSS (Citizen Signpost Service), see their report of 28 February 2010 analysing 673 cases on qualifications in 2009: "The mobility of professionals in practice" (ec.europa.eu/citizensrights).

[58] IMI is a secure, online application that allows national, regional and local authorities to communicate with their counterparts abroad. For more on IMI, see its annual report for 2011 (http://ec.europa.eu/internal_market/imi-net/docs/ar2011.pdf).

[59] 'Relatively restrictive' implies either a comparative judgement (with, say, other OECD countries) or an assessment of the market failures which have to be overcome with such regulation. Ideally (indeed, under EU law!), one should regulate proportionally, that is, no more than necessary in order to overcome the market failure(s).

wants to establish in one country only. But if professional services are provided in the framework of larger firms (say law firms, accountancy firms, engineering companies, architectural firms), heterogeneity adds considerable costs to a Europeanisation strategy, since there are fixed costs of entry that will have to be incurred for each country and will also differ in each case. If restrictions would be perfectly identical, perhaps an EU mutual recognition regime could be set up, cutting dramatically the costs of entry into national markets given the once-accepted fulfilment of the conditions. This is far more difficult or even impossible under heterogeneity, and is bound to add entry costs, which cumulate with the greater coverage of the 27 EU countries (or, 30 EEA ones). In turn, this is bound to influence structures and conduct of local professional service providers resulting, one would expect, in less competitive national markets. If restrictiveness is high and heterogeneity great, the internal market may even become a 'residual' market despite the right of establishment in the Treaty.

In OECD (2012, pp. 38-39), it is shown that the degree of restrictiveness in professional services in the EU-15 is (in 2008) at the lower end of the medium-level and clearly higher than in Japan; the difference with the US is even greater. With the help of a heterogeneity index (see section 7), it is shown that the (intra-)EU heterogeneity in professional services is about the same as the OECD average, but – quite remarkably – that the heterogeneity between non-EU OECD countries is about half (!) that of the intra-EU one. Of course, the latter group is not engaged in any particular economic integration or regulatory rapprochement whatsoever. This exercise only concerns four professions: lawyers, engineers, accountants and architects. These data serve as a powerful rationale for a mutual evaluation between member states of the regulated professions, as proposed in December 2011 by the Commission (see above). It is not proof of overregulation of too much restrictiveness per se, but it indicates that every member state ought to justify why this restrictive regulation is proportional and cannot be reduced, even if a number of OECD countries can do with far less restrictive regimes.

CSES (2012) has undertaken a 'regulatory mapping' of whether and how 13 EU member states reserve tasks by regulation, exclusively or in a shared fashion, for specific professions. The study covered business services (including the liberal professions), construction and tourism. The disparities in the EU are striking. In these three sectors, Germany has 55 regulated professions whereas Finland only has 16. The total for the 13 EU countries is 481 reserves, 284 shared and 197 exclusive. Differences in regulatory approaches are considerable. There can be no doubt that such restrictions, more often than not, constitute formidable barriers to cross-border services provision in the EU. Recent empirical economic work by Paterson et al. (2012) and Paterson & Sellner (2012) substantiates that both the restrictiveness of professional regulation and the (internal) market foreclosure effect are likely to have adverse economic consequences, both directly and via (cost-raising) interlinkages with other services or manufacturing activities. With the help of an Overall Services Assessment Index, an indicator of four quality aspects (choice, quality, speed and certainty), it is found that EU countries with a high degree of restrictiveness tend to enjoy less rather than more quality in professional services. The implication is clear: there is considerable scope to reduce restrictiveness of professional regulation in the internal market, thereby lowering barriers and facilitating intra-EU market access, without harming quality and consumer aspects justifying regulation the first place.

5.5 Barriers in other regulated services in the internal market

The remaining regulated services for Figure 1 are a small group of sensitive sectors (health services to mobile patients, gambling and private security services) and temporary service provision across borders.

5.5.1 Three derogated, sensitive services

These three services have in common that they were 'taken out' of the Bolkestein draft and, hence, are derogations in the horizontal services Directive 2006/123.[60] The following account of lingering barriers is merely indicative. First, the health services provided to patients moving cross-border to receive such services are a special case, in the sense that the core issue here is not 'barriers' in the form of restrictions of supply or establishment as such, but *barriers for consumers* to enjoy the rights under the Treaty (in other words, to exploit mode 2 in GATS terms). The main issues are i) precise and timely information (by insurers or the state health service) to patients about what the payment ceilings would be for treatment abroad, so that patients can take informed decisions and do not get caught in legal battles on (say) considerable sums for operations which, later, appear to be not covered; ii) rules about those ceilings for reimbursement (CJEU case law is clear on this: what would be paid at home cannot normally be refused when being treated abroad); iii) the kind of treatments covered ought to correspond to the type of treatments covered under the schemes of the patient's home country. Law-makers, especially in the European Parliament, were of the view, rightly or wrongly, that CJEU case law plus the specific protection under EU laws dealing with medical treatment related to intra-EU migrant workers [61] was insufficient to give mobile patients the legal protection to ensure their rights.

After years of debate, a separate Directive 2011/24/EU of 9 March 2011[62] has been enacted that addresses these issues and adds assurance about safety and quality of cross-border healthcare as well as a system of formal cooperation between national health systems. It is complementary to cross-border healthcare rights for migrant workers. What 'barriers' would remain, now that this directive is in force, can only be due to differences in coverage between national health services and their insurance systems, but these are clearly a matter of national decision-making,[63] given widely diverging preferences, distinct views on private/public delivery combinations as well as reimbursement systems and entitlements.

To give some idea of the economic dimension, around 1% of healthcare spending of EU countries relates to cross-border provision of services, some €10 billion, but that is without this new Directive. Depending on detailed options, the impact assessment of the original proposal[64] suggests a range for the number of patients benefitting annually from this Directive from 195,000 extra patients crossing intra-EU borders up to 780,000. Most of these are

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[60] In fact, temporary work agencies were also taken out of the horizontal services Directive during the legislative process. Between the EU member states, there are considerable differences in the use of temporary agency work and in the legal situation, status and working conditions of temporary agency workers within the EU. In turn, this has led to barriers or even a ban on the right of establishment of such agencies, most notably the long blockage of Randstad (the largest EU service provider in this submarket) coming into Italy. Therefore, the sensitivity in this area is mainly, if not entirely, due to a lack of harmonisation of minimum (temporary agency) workers' rights. With the origin principle at first still in the draft (Bolkestein) Directive, it was impossible for social partners and many member states to accept these services to be governed by the horizontal services Directive. With Directive 2008/104/EC of 19 November 2008 on temporary agency work, the protection of such workers is ensured and the principle of equal treatment is explicitly guaranteed.

[61] Reg. 883/2004 in OJEC 2004 L 166 on the coordination of social security systems for migrant workers and their families.

[62] See OJEU L 88 (pp. 45 ff) of 4 April 2011 on the application of patients' rights in cross-border healthcare.

[63] The Treaty even specifies that any Union action "shall complement national policies" (Art. 168 /1, TFEU) and "respect the responsibilities of the Member States for the definition of their health policy and for the organization and delivery of health services and medical care" (TFEU, Art. 168/7).

[64] See SEC (2008) 2163 of 2 July 2008, p. 63 for a summary.

patients in border regions and those on waiting lists in national health systems suffering from rationing. We shall refrain from discussing a broader discussion of 'barriers' here.[65]

The second derogation from the services Directive concerns *gambling*. Member states tend to regulate this sector strictly, although somewhat less so for sports betting. Until recently, two regulatory models co-existed amongst member states: either licensed monopolies (often state-owned or partially) or several licensed operators under a strict regulatory regime. The first regime forms a denial of free movement of services as well as the right of establishment. Barriers are prohibitive. It has been allowed (under precise conditions) by the CJEU (e.g. in a case against Finland) as a SGEI, a service of general economic interest under Art. 106, TFEU, a construction usually applied to network industries. The second regime in principle allows for free (in fact, highly conditional) movement of services and for the (again, highly conditional) right of establishment and should be non-discriminatory even if strict.

There are two problems with national gambling regulation, the first being that member states are inconsistent and employ incoherent laws. Thus, country A might defend its monopoly on gambling and games of chance, asserting that it wants to minimise addiction problems and pre-empt crime. In reality, if few or no more specific measures are taken, all the monopoly does is throw up a prohibitive barrier to entrants, whether domestic or from the EU, hence protecting a commercial interest or, if the state has a major financial stake, giving priority to maximum revenue. Indeed, there have been instances where the monopoly was advertising quite aggressively in order to generate more revenue without any sign of prudence for the market failures at stake. In the second regulatory model, this is less easy to do, but there may still be such a restrictive practice in licensing that non-discrimination is doubtful, or that the public interest motive (rather than protection of vested interests) is dubious at best.

The second problem with gambling regulation in the EU is the response to gambling on-line, a rapidly growing market. Whereas the EU gambling market had a turnover in 2011 of €85 billion with an annual growth rate of 2.8%, the on-line gambling segment amounted to €9.3 billion with a high growth rate of 14.7%; in 2015, the expected revenues for on-line gambling will be €13 billion, some 14% of the overall gambling market.[66] Since on-line might mean anywhere in the EU (or beyond), it risks having the effect of undermining existing regulatory models in various ways. On-line can be a black market (outright illegal), a 'grey' market (licensed operators in member states A and B, offering on-line gambling services in member state C, without authorisation) and a 'white' (legal) market, which tends to be regulated. National responses to on-line gambling have been disparate and, at times, incoherent, leading to cases[67] against member states. Meanwhile, commercial operators and

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[65] This Directive, in combination with section 5.4 on professionals, begs the broader question of whether the market for health services itself is part of the internal market. Strictly legally, it is but in actual practice the CJEU is extremely reluctant to assess restrictions and their logic. Can health providers (hence, the supply side) provide services across borders and/or establish themselves 'freely' in order to provide local services? And if so, what about the 'opaque' funding regimes of the member states, which – by possibly hidden state aids – might distort this incipient internal market for health services? The short answer is that these questions are basically taboo, except in marginal and carefully limited instances. We shall therefore ignore the issues involved. But see a revealing paper by Hancher & Sauter (2010).

[66] Source: Commission Staff doc SWD (2012) 345 of 23 November 2012, "Online gambling in the internal market".

[67] Examples include France in 2010, removing – after Commission proceedings – exclusive rights on horse-race betting and introducing a licensing system (also for cross-border) on-line sports betting, while maintaining strict controls on gaming. Or, consider the case of the Netherlands, which allowed the introduction of new, addictive

even monopolies (sometimes eager to extend their business in other EU countries) are in need of greater legal certainty given the wide variety of restrictions and the elusive on-line markets.

And member states feel a need to define an EU framework regime within which national regulated markets can operate, without unduly restraining less risky activities, also not cross-border. The Commission published a Green Paper[68] as the basis for an extensive consultation. It is therefore not easy to describe exactly 'the' barriers to cross-border service provision and to establishment in gambling activities, except that an internal market for sports betting seems to emerge (also on-line) with considerable regulation. Beyond that, models still differ but might well be seen as in a state of flux due to pressure from the Commission and the CJEU with respect to coherence and due to on-line developments. In 2012, the Commission proposed an EU framework for on-line gambling, dealing with enhanced supervision, administrative cooperation, better enforcement, responsible advertising, protecting minors and fighting addiction, preventing fraud and money laundering as well as safeguarding the integrity of sports matches.[69]

The third derogation consists of private security services. The original suggestion that a separate directive would be proposed seems to have been given low priority, given that links with national 'state authority' differ between member states, which would render it difficult to come to a workable agreement.

5.5.2 Temporary cross-border provision of services

When studying Table 9 and the relevant lines in Annex 2 for services under Directive 2006/123, one can get a good idea of how cross-border services are still restricted by 'barriers'. However, that need not fully coincide with the 'barriers' to *temporary* cross-border services provision, since for such services, a lighter regulatory regime may well apply. As far as we know, no survey or even incomplete list of restrictions of temporary cross-border services under the services Directive exists in the public domain. A second area to be inspected are the temporary cross-border services under the regulated services regimes in Figure 1 (or, even beyond that, in services that are under national regulatory autonomy such as health, [non-private] education and non-private media services). Thirdly, temporary cross-border services can be sensitive in some sectors where wage disparities in Europe are sharp and nominal wages are critical for competitiveness. This can be relevant in construction and related services, horticulture, selected agriculture, food processing and the hotel, restaurant and pubs business. Directive 96/71 on posted workers protects workers on temporary cross-border service assignments against wage competition by imposing minimum wages of the country where the service is performed (host-country control).[70] This is a restriction, indeed a 'barrier', that may have significant economic impact in an internal market with large wage differentials.

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games and intensive advertising, without any sign of taking measures against gambling addiction, whilst maintaining its monopoly, the revenues of which go entirely to the state. The Commission issued a 'reasoned opinion' in an infringement proceeding, which may lead to a CJEU case. See Commission Press releases IP/10/1597 and IP/08/330.

[68] COM (2011) 128 of 24 March 2011, Green Paper on on-line gambling in the internal market.

[69] COM (2012) 596 of 23 November 2012, Towards a comprehensive European framework for online gambling.

[70] Note that this host-country control also applies to intra-EU migrant workers. In other words, in order to prevent artificial substitution between intra-EU migration and temporary services, both are subjected to host-country control, thereby also ensuring that national wage arrangements (or laws) are not undermined by labour exploiting the internal market via migration or temporary services at far lower wages or even labour costs.

The posted workers Directive 96/71 is meant to facilitate short-run service assignments across borders (provider moving across border to client, or mode 4 in GATS). There are several controversies around this Directive and some have to do with 'barriers', directly or indirectly. It is good to realise that 96/71 is not about the services themselves but about the labour content of the services and some administrative aspects.[71] By imposing local minimum wages in temporary service contracts also for providers coming from other EU countries, competition for such service contracts can be 'on the merits' (that is, quality, special expertise, experience, duration, etc.) and is not influenced by artificially low prices driven by lower-than-local wages. Typically, labour unions defend this approach because they insist that, on any particular work site, equal work should be paid equally, not unequally. The term 'equally' is to be interpreted not literally as 'identical', but pay has to obey local minimum wages in any event.

In an internal market where (minimum) wages do not differ very much, the economic impact of the directive is almost certainly pro-competitive: on the merits. However, once the Union is characterised by a divide in low-wage and high-wage national economies (at least for a period before slow convergence reduces this divide sufficiently), the posted worker Directive has radically different economic effects. Since we analyse *temporary* service provision, normally one should expect a proximity constraint (as otherwise the travel costs and complications for short stays would render the provider uncompetitive). Therefore, imagine Latvian providers offering temporary services in Sweden or Finland, Slovak providers in Austria, Polish providers in Germany or Bulgarian providers in Greece. All these providers will be able to offer far lower prices for a given quality of service, given their local wages, if… they were allowed to do this. The Directive, however, forbids this: wages incorporated in the service must be at least the minimum wages in the host countries.

The economic effect of this is that the incipient demand for a given quality of any temporary service offered by providers from low-wage economies is drastically curtailed. This is anti-competitive. It is socially problematic, too. Whereas it does protect local workers in Sweden, Finland, Austria, Germany or Greece, it *pre-empts* Eastern European EU workers from exploiting their lower wages as a competitive advantage in the internal market! In fact, one can regard this constraint as a serious impediment of the free movement of temporary services, because, with equal (minimum) wages, the advantages of local firms in performing temporary contracts may squeeze the Eastern providers out of the market for the large majority of cases. Put differently, in a purely economic perspective, the posted workers from the Eastern EU run into a high 'barrier', which prevents them from exploiting the internal services market.

This economic conclusion has to be modified to some degree due to two particularities of actual practices in services markets. First, given the large wage differentials, the incentives for purchasers of services or for supplier companies to search for circumventive constructions are strong. The main evasions include a) local contractors winning the tender and subcontracting to companies originating in Eastern Europe; b) contracting an independent (without personnel) who, under the treaty, is free to move or establish and will contract one entire 'service' with one final price (irrespective of the implicit wage incorporated in the work); and c) since b) is not possible for a more sizeable assignment, an 'alliance' of a number of independents (without personnel) bids for the contract as a whole and the actual

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[71] The administrative aspects were causing severe barriers for temporary cross-border provision in some member states. See European Commission (2002) for evidence. The services Directive has several obligations to reduce unreasonable administrative requirements and enhance administrative cooperation between member states.

work is (legally) contracted on the basis of individual contracts. The current informal negotiations for a revision of 96/71 are likely to impose severe limits on the terms of subcontracting a). The options b) and c) run into natural limits but are nevertheless used frequently in the construction of smaller dwellings. Option b) is also applied in some other sectors although there seems to be no systemic information. Insofar as a, b and c are used, wage competition in certain highly specific sub-markets might still occur via (temporary) service contracts, some of which may well be cross-border. Second, Directive 96/71 assumes minimum wages, but the fact is that four EU countries do not have a general system of setting minimum wages by law, or have only selected sectoral minimum wages or no minimum wages as a matter of principle.[72] These countries are: Sweden, Denmark, Germany and Cyprus. Lacking minimum wages, it is anything but clear whether collectively agreed wages must also be applied by entrants from other countries, such as under temporary service provision. In spectacular CJEU cases;[73] like *Laval* (2007) and *Rueffert* (2008), the Court has clarified that this is not necessary, as long as reasonable offers are made (e.g. in Laval). The CJEU has the unenviable task of balancing two fundamental principles: free movement and protecting the rights of workers, the Eastern workers benefiting from the first and the Swedish and German workers from the second. In Germany, some questionable practices have been reported in the food processing industry near Munich where Bulgarians seemed to have worked for wages below €5 an hour, a fraction of regular German wages, via short-term posting arranged by Bulgarian intermediaries.

Data on temporary service provision across intra-EU borders is non-existent (as far as the authors know). But some indirect evidence is available[74] and helpful in grasping economic reality. Around 1 million workers are posted annually in other EU countries for a service provision of limited duration, often no more than a few weeks or several months. Figure 3 shows data on the receiving countries (host countries). This graph clarifies that temporary service provision across borders is *not* primarily driven by the intra-EU wage gaps.

Apart from Germany, eight EU countries, with the largest inflows of posted workers, all register more posted workers from EU-15 (*high-wage* economies) than from EU-12. Of the three countries (Cyprus having virtually no posting) without minimum wages, only Germany has more posted workers from EU-12 than from EU-15, whereas in Sweden it is about equal and in Denmark there are few posted workers from Eastern Europe. In Finland (having a minimum wage), most posted workers nevertheless come from EU-12. The source of Figure 3 also provides data on the sending countries[75] and it appears that, of the 15 EU countries ‘sending’ more than 10,000 posted workers across intra-EU borders annually, nine are from EU-15. Those nine countries send a total of 519,000 workers whereas the six EU-12 countries in this group ‘send’ 326,000 (dominated by Poland with 204,000). These ‘sending’ data confirm that temporary-service provision across borders is not a marginal activity, but a probably useful ‘lubricator’ of the internal market for services with pro-competitive effects. It is also clear that, even if an unknown share of these activities might be artificially boosted by wage gaps in the EU (especially in three countries and via evasive constructions), the bulk of

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[72] The idea behind this refusal – alien to most EU countries – is that social partners should be free to contract and the state should not meddle with this ‘right’. Other EU countries have minimum wages, without in any way limiting the freedom of contracting wages and secondary conditions beyond the minimum.

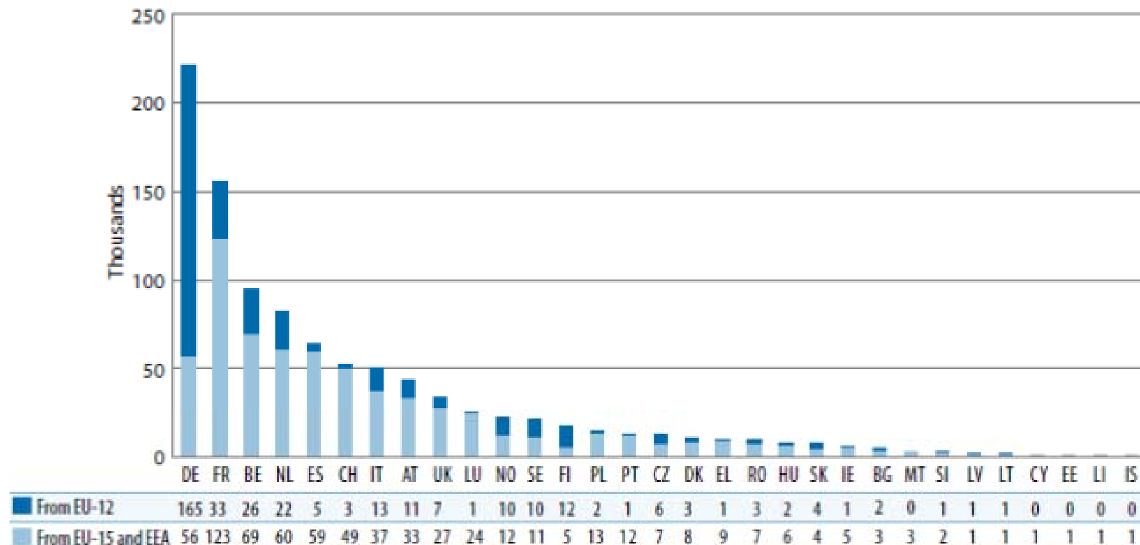
[73] See Case C-341-05 *Laval un Partneri* [2007] ECR I-11767, and Case C-346-06 *Rueffert* [2008] ECR I-1989.

[74] All data and the graph originate from European Commission (2011), “Employment and social developments in Europe 2011”, pp. 257-258. Note that these data are likely to be an underestimate.

[75] Ibid., p. 258, Chart 9.

temporary service provision across borders is driven by quality and 'value-for-money' considerations of purchasers with a large share of (high wage) EU-15 workers performing those services. What one cannot observe, of course, is the converse: How much of such temporary cross-border service provision has remained impossible due to the host-country-control principle and/or cumbersome administrative requirements?

Figure 3. Posted workers in host countries, coming from EU-12 and EU-15 (in thousands)



Note: Data do not include E101 certificates issued for persons active in 2 or more MS, multiple destinations, or international transport. Figures do not include postings from SE and CH as neither country provided data disaggregated by destination country. Figures for the UK relate to the period April 2009 to March 2010, and the figures for Germany to 1 January 2009 to 30 November 2009.

Sources: European Commission (2011), "Employment and Social Developments in Europe".

6. Measuring Service Trade Restrictiveness: Comparing indices

6.1 The Services Trade Restrictiveness Indices (STRIs)

The mere description of barriers to cross-border provision of services (in four modes) is a complex exercise, let alone their quantification for purposes of economic analysis or policy information. This section briefly compares some quantification efforts of services barriers, with details in Table 11. Although there have been attempts to construct 'tariff equivalents' of restrictive measures based on partial equilibrium analysis (see Deardorff & Stern, 2008; Dihel & Shepherd, 2007), most economists are uncomfortable with those because they do not do justice to the nature and practical effects of most of these *behind-the-border* measures.[76] Following some simple, but illustrative attempts by Hoekman (1995), the Australian Productivity Commission pioneered services trade restrictiveness indices (STRIs) around

[76] As pointed out by Francois & Hoekman (2010), a different way to look at regulatory restrictions in trade in services is based on an indirect method to calculate the flows that we would observe without such restrictions, and derive an estimation of tariff-equivalents this way. However, this approach is hampered by difficulties in establishing price-cost margins or differences in volumes according to different policies. This is one of the main reasons why the earlier literature preferred frequency indicators. Note, too, that tariff equivalents are by definition unsuitable when barriers represent fixed-costs-of-market access, because such fixed costs have no effect on the pricing of the services following actual entry into the market.

2000. This work has been further developed notably by Philippa Dee and Christopher Findlay. At a later stage, the OECD and the World Bank each have begun developing more systematic data bases, and two distinct STRIs. All these efforts targeting cross-border service provision anywhere in the world economy.

The restrictiveness index provides a frequency indicator capable of assessing the impact of policy restrictions on the exchange of services. The idea behind it is to convert qualitative information of 'barriers' into a quantitative indicator that, depending on the specific methodology applied, approximates the degree of restrictiveness (see Table 11). The aim of this difficult exercise is two-fold: first, the index can be used as a regressor to evaluate the impact of service restrictions, for instance, on services trade or FDI (Francois & Hoekman, 2010). Moreover, it is likely to serve policy-makers as it synthesises complex information which makes it possible to compare regulatory restrictiveness of two or more sectors/countries, as well as over time. In the world economy at large, this may already be helpful for negotiators in free trade area agreements or at WTO/GATS level. However, inside the EU's internal market, with overriding and enforceable principles which already do away with most of the restrictions caught by such crude empirical measures, one has to zoom in on the numerous subtleties characterising many services barriers.

One of the early attempts was made by Dee (2005). By applying the methodology followed by Findlay & Warren (2000) to quantify barriers to trade in service, she computed an indicator based on a quantitative assessment of qualitative restrictions and then weighted the results thanks to experts' judgments. It constructs two separate indicators capable of differentiating between the impact of restrictions on domestic incumbents and foreign entrants.

In 2009, a new index was developed by the OECD capable of measuring the degree of restrictiveness of cross-border trade in services, the *Services Trade Restrictiveness Index*. The aim of these new sets of indicators is to empirically and more systematically assess how regulatory restrictions create obstacles to cross-border exchange of services in many countries. Irrespective of whether regulations applied by (OECD) members are justified, the focus is on whether and to what extent they create an obstacle to trade or FDI. The current OECD pilot project[77] focuses on few sectors only, namely i) *construction*, ii) *computer services*, iii) *professional services*, iv) *telecommunications*, *postal and courier services* and v) *distribution* and *audio-visual services*. The authors[78] construct an index by studying five types of restrictions[79] that can affect not only service provision in general but also the respective modes of supply and turning them into a quantitative binary measure. The data requirements are of course massive. Methodologically, the aim of the project is to provide an indicator that *make things as simple as possible but not simpler*! (OECD, Project team, 2009).

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[77] For more info, please see the OECD website (http://www.oecd.org/tad/services-trade/towardsaservicestraderestrictivenessindexstri.htm).

[78] Among the team responsible for the OECD STRI project, we mention: Massimo Geloso Grosso. Frederic Gonzales, Anna Jankowska, Rainer Lanz, Molly Lesher, Sebastien Miroudot, Hidelgunn K. Nordas and Alexandros Ragoussis.

[79] The five types of restriction under analysis are namely: restrictions on foreign ownership and other market entry conditions, restrictions of the movement of people, other discriminatory measures and international standards, barriers to competition, and finally regulatory transparency and administrative requirements.

Table 11. Restrictiveness indicators for services and heterogeneity: A comparison

Index	Definition	Countries/sectors/modes of supply	Trade restricting regulations	Methodology	Weighting schemes	Robustness checks and relevance
Services trade restrictive-ness index (OECD)	It is a composite index aimed at identifying any trade restricting regulation in the services sector. It can be derived from a *bottom-up* approach starting from the scoring of ad-hoc regulatory database.	OECD countries In the pilot phase of the project, seven sectors are covered: computer services, construction, professional services (including accounting, architectural services, engineering services and legal service), telecommunications, postal and courier services, distribution and audio-visual services. Index provided by modes of supply	The qualitative restrictive regulations are collected according to the following types of restrictions: • *Restrictions on foreign ownership and other market entry conditions* • *Restrictions on the movement of people* • *Discriminatory measures, standards and equivalence* • *Public ownership, size and scope of public enterprises* • *Price controls and regulations on market behaviour* • *Barriers to competition* • *Regulatory transparency and licensing/permit systems*.	Binary (90%) and continuous scoring	**1.** Expert judgment (new approach compared to the past that reduces the risk of subjectivity) **2.** Principal component analysis **3.** Marginal effect on trade However, final decision imposed equal weights for measures within categories	The robustness checks (performed through PCA, equal and random weights) states that the STRIs are robust. Furthermore, a gravity equation confirms that: Modes of supply are complementary (Nordäs & Kox, 2008) so they can be affected by restrictive policies as much as the trade flows 'level in each mode. In professional service, telecoms and computer services, regression supports the validity of STRIs

Services trade restrictions index (World Bank)	It is a measure that captures the restrictive effect of the entire set of policies applied by a country in a given service sector and mode of supply.	103 countries (79 developing and 24 OECD countries) Five sectors*:* • *financial services (bank lending and deposit acceptance)* • *telecommunications (fixed and mobile line)* • *retail distribution* • *transportation (air passenger domestic, air passenger international, maritime shipping international, maritime auxiliary services, road trucking and railway freight)* • *professional services (accounting auditing and legal).* Above-mentioned sectors are further divided into subsectors. Data concern only Modes 1, 3 and 4.	Information provided on the basis of the Services Trade Restrictions database. Among the measures pertaining to *Mode 3:* *i. Requirements on the legal form of entry and restrictions on foreign equity* *ii. Limits on licenses and discrimination in the allocation of licenses;* *iii. Restrictions on ongoing operations;* *iv. Relevant aspects of the regulatory environment* Measures governing *mode 1* are slightly different in that they typically stipulate conditions under which cross-border trade may take place. Among the measures concerning Mode 4, the database covers only professional services focusing on immigration rules and qualification requirements that strongly affect this mode.	The authors assess policy regimes in their entirety and assign them to five degrees of restrictiveness: • *completely open*, i.e. *no restrictions at all*; • *completely closed*, i.e. *no entry allowed at all*; • *virtually open but with minor restrictions*; • *virtually closed but with very limited opportunities to enter and operate*; and a final residual • *middle category* of regimes which allows entry and operations but imposes restrictions that are neither trivial nor stringent. The methodology implies a value assigned to each regime on an scale from 0 to 100 with intervals of 25.	Different weights are attached to each sector based on services *sectors' standardised share in total services output for an average industrialised country.*	According to their estimations, restrictions can reduce the expected value of sectoral foreign investment by *$2.2 billion* in a period of 7 years. Additionally, they found there is a tight negative correlation between the country-level STRI of mode 3 and the *Investing across Border's Ease of Establishment index*. This suggests that across countries a more liberal services trade policy stance is associated with a greater ease of establishment. Finally, the high positive correlation observed between the country-level overall STRI score and the *OECD's PMR index* (both increasing in restrictiveness).

Barrier indicator (European Commission)	The aim is identifying the implementation of the SD after 5 years by computing a simple mean across restrictions (at sector and country level). There are two different indicators, one that affects cross-border provision of services and FDI. Another one affects domestic activity	27 member states 15 selected sectors (affected by the SD). In particular: *accountants, architects, certification service in the area of construction, construction/building company, crafts businesses in construction sector, engineers, hotels, large retail, legal services, real estate agents, restaurants, small retail shops, tax advisers, tourist guides, travel agency* No distinction by modes of supply	Restrictions include: *1) Article 9 authorisations* *2) Article 14 requirements* *3) Article 15 requirements* *4) Article 16 requirements* *5) Article 25 requirements*	The indicator is a simple mean of originally qualitative restrictions turned into quantitative numbers before and after the Directive. In particular, equal to 1 (existing barrier) and 0 (non existent), before; 1 (fully maintained barrier), 0 (non-existent barrier) and 0.8 (reduced)	Equal weights to the restrictions at country-sector level mean	Econometric analysis only based on the *pre-directive* period. The impact of the barriers on trade, FDI (international channel) and direct impact (domestic channel) is defined in terms of productivity. The estimated elasticities of trade to cross-border provision barriers in the importing country and of FDI to establishment barriers in the destination country show that a removal of barriers increases trade and labour productivity in services.
Bilateral heterogeneity indicator (CPB)	It identifies identify bilateral regulatory differences, without specifying in which dimension these takes place. It assesses to what extent specific rules differ between any pair of countries. What matters for the	42 importing countries (OECD members) and 60 partner (OECD plus other) Sectors in trade come from EBOPS categories and FDI stocks from the ISIC classification. In particular, the analysis covers *transport, post and telecommunications, financial services, computer and related services and other business services.*	Bilateral indicators of policy heterogeneity consider restrictive policies listed in the OECD PMR survey and the WB *Cost of Doing Business indicator* The regulatory areas included in the *PMR database* consider: *barriers to competition*; *administrative barriers for start-ups*; regulatory and	The dissimilarity indicator *Rhij* is specific for each possible country pair *i* and *j* and ranges from 1 (both countries are dissimilar with respect to *R*), to 0 (in the opposite case).		With indicator built on PMR Database, bilateral FDI decreases when eh bilateral heterogeneity index, in the form of aggregate PMR and sub-indicators, increases. The use of dummy variables, however, shows that when an EU member state trades with an extra-EU country, there is a beneficial

	exporting company is to know *to what degree rules in the target country are dissimilar to rules in the firm's home country*.	There is no index grouped by modes of supply	*administrative opacity*; *explicit barriers to trade and investment*; and *state control* The WB *Cost of Doing Business* include: *Starting a Business, Dealing with Licenses, Employing workers, Registering Property, Getting Credit, Protecting investors, Paying Taxes, Trading Across Borders, Enforcing Contracts, and Closing a Business*.			effect due to a potential harmonisation (or mutual recognition) of the regulatory frameworks: this means that countries characterised by a higher level of heterogeneity can gain more by this policy option than countries already liberalised, and can experience, in any case, an increase in the inward stocks. The same result is confirmed by the use of the WB *Cost of Doing Business* Database.
Other sectoral indicators (banking)	The index of barriers to domestic entry measures the effects of non-discriminatory restrictions affecting both domestic and foreign operators. The index of barriers to foreign entry adds to this the effects of discriminatory restrictions	World economies in one or two points in time Banking sector No modes of supply	Restrictions on commercial presence: • *Licensing* • *Direct Investment* • *No new licenses and JV arrangements* • *Movement of People* • *Permanent* Other restrictions such as *Raising and lending funds by banks* Information originally compiled by McGuire and Schuele (2000)	A score is assigned to each restriction from 0 to 1 with intervals of 0.25 and then aggregated by country	The weighted scheme is arbitrary by assigning a weight (empirically tested) to each restriction. It can be distinguished between a foreign and domestic weighting scheme. The study recalls the weight proposed by McGuire & Schuele (2000).	In Dee (2004) and Kalirajan (2000), the foreign trade restrictiveness is among the explanatory variables of a 'corrected' interest margin.

	against foreign operators. Thus the difference between the domestic and the foreign index gives a preliminary measure of the pure margin of discrimination against foreign operators.					

Sources: Authors' elaboration on information from OECD (2009), World Bank (2012), European Commission (2012), Kox et al. (2009) and Dee (2004).

Therefore, one would want to avoid losing crucial qualitative data once they are aggregated in a simple number: it implies preserving as much as possible the variations in the raw information in the final indicator. Once the basic regulatory restrictions are measured, the definition of a threshold for the binary measure, when it is not naturally provided, is supported by a proper weighting scheme, usually an expert's judgment, hoping to limit subjectivity as much as possible.[80]

The index is used in explaining trade variables with the help of three gravity regressions, using as dependent variables bilateral imports, bilateral inward FDI and bilateral inward FATS[81] in four services sectors: construction, computer and related services, professional services and telecoms, from 1999 to 2006. The coefficients are interpreted as importer-specific and correlated to bilateral exchange over time. The negative value indicates that a higher STRI is related to lower bilateral trade in services. Notwithstanding the problems in data collection (and the temporal mismatch between trade and regulation data), results are satisfactory for telecoms and professional services where the index shows significant negative coefficients. In computer services, a significant negative coefficient is estimated for inward FATS and FDI. More ambiguous results are instead shown for the construction sector.

A slightly different approach is proposed by the World Bank based on the Service Trade Restriction Database,[82] which collects data for 103 countries and three modes of service supply (excluding mode 2 – *consumption abroad*). The database provides complementary information by specifying restrictions that only affect foreign providers. It also adds value by covering a large group of countries.

Table 12. World Bank regulatory database by subjects and providers

Subject	Affecting foreign providers	Affecting ALL providers
Policy or regulation	***Services Trade Restrictions Database***	OECD product market regulation (PMR)
Administrative or procedural requirements	WB/IFC Investing Across Borders	WB Cost of Doing Business OECD Product Market Regulation (PMR)

Source: Borchert, Gootiiz and Mattoo (2012).

The index is based on a simple average by country and by sectors and, in contrast to other indicators, rather than assigning weights to different policy regimes, it considers measures as *additive*. The methodology is the following: for each (sub) sector and mode of supply, a value from zero to 100 (degree of restrictiveness) is assigned, with intervals of 25.

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[80] The authors are aware of the pitfalls of such a methodology. What should actually be used to properly weight each sector and type of restriction is very difficult to calculate. It is argued that a perfect scheme would be characterised by a weight able to measure the marginal contribution to trade costs of each sector according to the respective types of restrictions. However, as this is hard to define especially due to the lack of consistent (and timely) data, weights are based on expert judgment while other schemes – such as Principal Component Analysis and equal and random weights – are used to perform robustness checks. The subjectivity issue when weights are solely based on experts' judgments, is quite controversial and, at the same time, difficult to avoid. However, the OECD STRI tries to reduce this risk by asking experts to agree on categories' rankings and scores within each category.

[81] The service turnover of foreign affiliates in their host countries (foreign affiliates' trade in services).

[82] Please see database on the World Bank website (http://data.worldbank.org/data-catalog/services-trade-restrictions).

The resulting five degrees of restrictiveness are: *completely open*, *completely closed*, *virtually open but with minor restrictions*, *virtually closed but with limited opportunities to enter the market* and a *residual category* where the regulation under analysis is not preventing entry but imposes obstacles at later stages. The scores attached to the different areas can then be aggregated across sectors and modes, using sector weights defined by the authors (inevitably somewhat subjective). As shown by previous attempts, pitfalls in methodologies are such that researchers prefer to keep weighting schemes as simple as possible, and strongly supported by expert judgment, rather than building a more complicated approach that is difficult to defend. Recognising the broad country coverage and the undisputed merit to define an indicator on service trade restricting regulations by modes of supply, it is nevertheless worth oberving that it would seem to be more useful to rank restrictiveness in various regions in the world economy, rather than exploring intra-OECD differences (which have become smaller), let alone, the more subtle and refined intra-EU barriers to exchange of services. The latter would require a more refined approach as we showed for intra-EU services above. In an international comparison (with a limited sector scope), it is not surprisingly that OECD countries tend to show a relatively low level of restrictiveness in transportation services and in services provided under mode 4, although these are the most protected sectors in the world overall (see Borchert et al., 2012).

6.2 An EU barrier indicator quantifying barrier removal under the services Directive

Recently, the European Commission (Monteagudo et al., 2012) also embarked on a brave exercise of quantifying the restrictiveness of services regulations. In this case, however, the focus is on the quantification of the change in barriers before and after the implementation of the services Directive. A barrier indicator is built from data derived from the 'mutual evaluation' process and supported by experts' analysis. The authors study changes in 20 types of regulatory restrictions falling under the scope of the Directive.

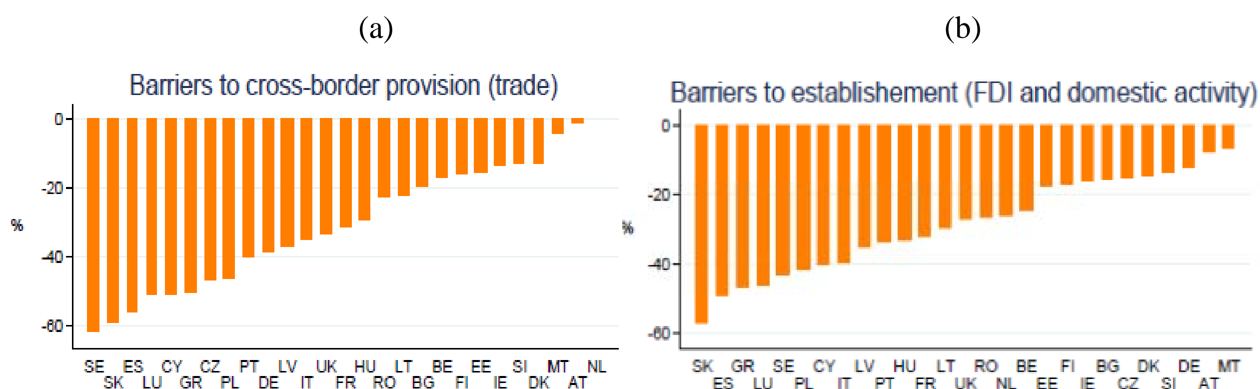
The restrictions analysed include both those affecting cross-border provision of services between member states and those regarding the establishment of commercial presence in other member states. The construction of the barrier indicator is functional to test two channels through which the Directive, once having removed or reduced intra-EU services trade barriers, contributes to an increase of productivity: first, by facilitating trade and FDI and, second, by exposing domestic service activities to greater competition from the better functioning of the internal market. Of course, the sector scope is limited to services falling under the Directive. As in STRIs, the main challenge is to turn qualitative information from the 'mutual evaluation' into quantitative indicators without losing information included in raw data. The methodology used by Monteagudo et al. (2012) partially avoids this issue since, instead of translating the restrictions, they assess quantitatively how this is changed thanks to the Directive. More precisely, they assess each restriction before and after the implementation with a 0 (*non-existent barrier*) or 1 (*existing*) and as a 0 (*non-existent*), 1 (*still existent*) and 0.8 (*partially reduced*),[83] respectively. Then, a mean by sectors and country is computed by assigning equal weights.

Their results in Figures 4a and 4b show a marked reduction of restrictive regulation in the EU, but it is uneven between member states both in cross-border exchange and in FDI (establishment).

[83] The value 0.8 corresponds to a reduction in restrictions of 20%. A group of experts agreed on this assumption.

The Commission reports that no less than 35,000 requirements for services in 27 EU countries have been identified and reviewed during screening and evaluation, resulting in considerable simplification, less restrictiveness and abolition in many instances. In effect, the services Directive and the 'ownership' assumed by the member states in the process of implementation has, belatedly, led to a thorough enforcement of the EU treaty principles and case law about the internal services market that had been lacking for decades.

Figure 4. Average barrier changes under the services Directive by 2011



Note: The percentage change shows how each member state has reduced barriers to cross-border exchange (a) and establishment (b) after the implementation of the Directive, regardless of their initial condition.

Source: Monteagudo et al. (2012).

Monteagudo et al. (2012) find, when using the barrier indicator in a gravity model, that the implementation of the services Directive has generated an extra 0.8% of EU GDP (ranging from 0.3% and 1.5%, depending on the member state in question). The main merit of this study is to identify two channels through which the increase takes place: the international one by boosting intra-EU services trade by 7% and FDI in services by 4% and, secondly, by inducing an increase of domestic productivity prompted by the domestic reform process implied by a lower restrictiveness of services regulation.

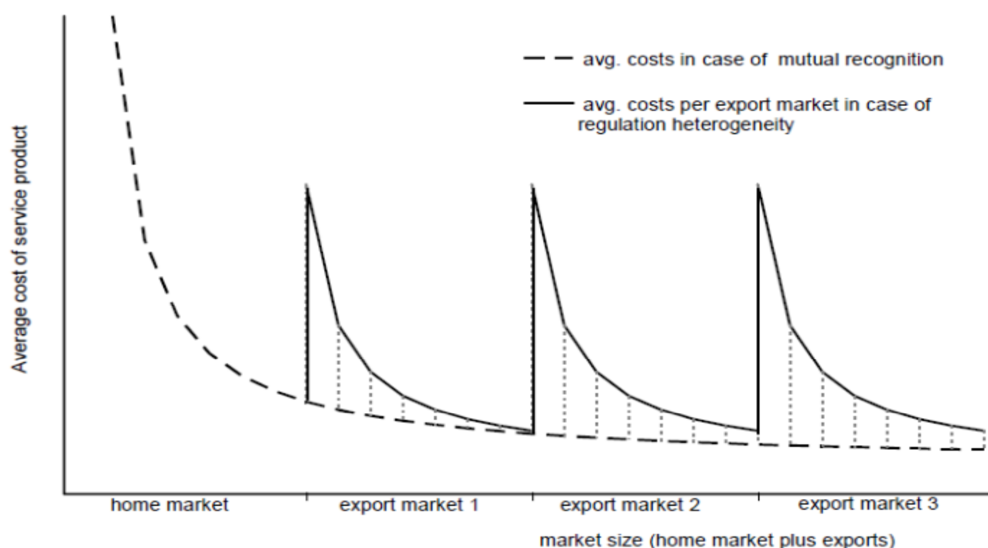
6.3 A complementary approach: The CPB Bilateral Heterogeneity Index

A somewhat different indicator to restrictiveness in trade in services can be built, based on the idea that regulatory heterogeneity between (EU) countries acts as an additional obstacle to the exchange of services. Regulatory heterogeneity is purely about differences; it neither refers to the intensity of the regulation in the national market (at least, not directly) nor does it assume that regulatory measures *per se* always restrict competition. After all, when properly designed, (services) regulations are a remedy for market failures and such proper remedies could sometimes even contribute to lowering entry costs. The idea behind such heterogeneity relates to the extra difficulties companies face when planning strategies to exploit the EU internal market for services. If services regulation is 'justified' according to EU principles (mainly, against market failures and non-discrimination), there is no need or obligation to remove it, but it may still cause regulatory heterogeneity between any two EU countries. The reason is a lack of harmonisation, alignment of regulations or mutual recognition. Unlike in the case of *tariffs* and *tariff equivalents* in goods, (non-price) regulatory measures do not

affect the export price of the service provided abroad, since they only alter the fixed costs of entry.[84] The consequent increase in fixed costs implies a higher volume for the single firm before reaching the break-even point, hence for the decision to enter the market. Kox et al. (2007) indeed, show that regulatory heterogeneity has a positive effect on the size of firms providing services across borders. It also follows that a second effect consists of fewer companies entering the market. Once the exporting firm enters the market, the regulatory heterogeneity with respect to the domestic one is no longer able to influence the activity of the foreign provider. In other words, insofar as trade barriers in services consist of regulatory heterogeneity, they cannot be proxied by *tariff equivalents* since the fixed costs of such barriers do not have any impact on the actual export price. In general equilibrium analysis, this distinction might well have a significant impact on the final evaluation of trade in services agreements.

In Kox & Lejour (2005), the effect of regulatory heterogeneity on the structure of fixed costs is explained with the help of Figure 5. It shows the fixed costs which have to be incurred every time the individual firm wants to enter a new (national) market (in the EU), in case of regulatory heterogeneity, while in the case of mutual recognition the average costs tend to marginally decrease. The policy implication is straightforward. If the majority of services are provided by SMEs, the presence of regulatory heterogeneity acts as market-entry deterrence by increasing the volume of sales that must be attained in the new export market before the break-even point is reached.

Figure 5. Cost effect of regulatory heterogeneity



Source: Kox & Lejour (2005).

[84] Fixed trade costs are mainly caused by regulatory barriers. In some instances, natural barriers such as differences in languages and (informal) institutions can play a role as well.

7. Conclusions

Answering a seemingly simple question about the nature and prevalence of barriers to cross-border trade and investment in services has only recently become possible. In order to make the answer intelligible, one has to first appreciate the different characteristics of access barriers to services markets as compared to those hindering goods markets. Access barriers to services are mainly the consequence of domestic regulation (*behind-the border*). Much more difficult to *read* the economic impact than for tariffs or quotas, such regulatory barriers are complex, multivariate and extremely differentiated; they are often applicable in regulatory clusters, generating a cumulative effect which throttles effective access.

When addressing barriers for services markets, there is a striking difference between the non-EU WTO environment and the EU (or EEA) internal market. In the former, the GATS has not been of great value in disciplining WTO partners, given the relatively few and shallow commitments in the negotiation schedules. Also, numerous recent FTAs do not often move beyond GATS commitments or beyond (modest) Doha offerings. Countless discriminatory regulatory barriers persist between non-EU WTO partners, something (by now) unthinkable in the EU. On the subtle, yet effective barriers arising from *non*-discriminatory regulation, just a few non-EU WTO regimes are only beginning to consider them in earnest with only modest results in some bilaterals so far. In quantification efforts of services barriers in the GATS environment, more often than not, the focus is on discriminatory measures.

The EU internal market for services is radically more liberal, due to (the right of) free movement between and establishment in all EU member states, as well as the application of a tough EU competition policy. Moreover, in broad sectors that are relatively heavily regulated (such as financial markets, network industries, etc.), EU regulation has greatly facilitated far-reaching liberalisation and later *deep* market integration. Finally, mutual recognition has also facilitated cross-border flows or aspects of intra-EU FDI. Given the complicated and splintered EU case law on services barriers and the highly imperfect enforcement up to the end of the 1990s, the relatively lightly regulated services sectors were brought under the 2006 horizontal services Directive. This study provides a quantitative assessment of barrier removal due to the Directive as well as a detailed exposition of remaining barriers to services market, both for trade and FDI, complemented by some sectoral details as well. The data give rise to two conclusions:

i) Unlike what was expected after a three-year battle in the European Parliament at the end of 2006, many barriers have been either abolished or reduced, and black-listed protectionist practices have disappeared.

ii) There are nevertheless many barriers remaining, especially with impact on FDI.

The six (regulated) services regimes outside the horizontal services Directive have seen considerable progress in liberalising market access in the period since 1992, whether in network industries, financial services, transport or professional services. There has also been some improvement (less red tape and arbitrariness) in the regime for temporary cross-border services. Nevertheless, none of these regulatory regimes has led to a genuine internal market, although transport (other than freight rail) has come close. The nature of the remaining obstacles is sketched for all these regimes. Removing these barriers may imply regulatory reforms at both EU and member state levels in one instance (e.g. freight rail), enormous infrastructural investment in another (e.g. electricity, gas and rail), less-intrusive regulation and more mutual recognition (e.g. certain professions), highly specific EU regulation (e.g.

private security services, temporary services across borders) or ingenious combinations of some of these.

Finally, the quantification of market access barriers in services is slowly making progress. After early attempts to 'guesstimate' different degrees of restrictiveness of services, databases of the OECD and the World Bank have drastically improved. The services trade restrictiveness index (STRI) of the OECD and that of the World Bank differ in the methodology (e.g. the latter is *additive*) of measuring services barriers, which is welcome, offering alternatives in the presence of great complexity. However, our paper shows – with very detailed examples from the non-EU WTO environment and on the basis of inspection of disaggregated services barriers inside the EU internal market – that STRIs have considerable limitations. They cannot possibly reflect the many subtleties of non-discriminatory service barriers and are handicapped when it comes to the accumulation of subtle barriers over different stages of the value chain.

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Annex 1. Restrictions on Trade in Air Transport Services (Index 0-1)

	Brunei	*Cambodia*	*Indonesia*	*Lao PDR*	*Malaysia*	*Myanmar*	*Philippine*	*Singapore*	*Thailand*	*Vietnam*	*Average*
A. Commercial presence (mode 3) - restrictions on entry											
1 Are there policy restrictions to new entry (via commercial establishment)?											
Any firm?											
International air passenger transport (scheduled services)	0	0	0	0	0	0	0	0	0	0	0
International air passenger (non-scheduled charter services)	0	0	0	0	0	0	0	0	0	0	0
International air freight (all-cargo carriers, express delivery)	0	0	0	0	0	0	0	0	0	0	0
Domestic air transport (scheduled services)	na	0	0	1	0	0	0	na	0	0	0.1
Domestic air transport (non-scheduled charter services)	na	0	0	1	0	0	0	na	0	0	0.1
Domestic air freight (all-cargo carriers, express delivery)	na	0	0	1	0	0	0	na	0	0	0.1
Provision of fuel	1	1	na	1	0	1	0	0	0	0	0.4
Luggage and freight loading and unloading	0	0	0	1	0	1	0	1	0	0	0.3
Aircraft repair and maintenance	0	0	0	1	0	0	0	1	0	0	0.2
Selling and marketing of air transport services	0	0	0	0	0	0	0	0	0	0	0
Computer reservation system	1	0	0	0	0	1	0	0	0	0	0.2
Foreign firms?											
International air passenger transport (scheduled services)	0	0	0	0	1	0	0	0	0	0	0.1
International air passenger (non-scheduled charter services)	0	0	0	0	1	0	0	0	0	0	0.1
International air freight (all-cargo carriers, express delivery)	0	0	0	0	1	0	0	0	0	0	0.1
Domestic air transport (scheduled services)	na	0	0	1	1	0	0	na	0	1	0.4
Domestic air transport (non-scheduled charter services)	na	0	0	1	1	0	0	na	0	1	0.4
Domestic air freight (all-cargo carriers, express delivery)	na	0	0	1	1	0	0	na	0	1	0.4
Provision of fuel	1	1	na	1	0	1	0	0	0	1	0.6
Luggage and freight loading and unloading	0	0	0	1	1	1	0	1	0	0	0.4
Aircraft repair and maintenance	0	0	0	1	0	0	0	1	0	0	0.2
Selling and marketing of air transport services	0	0	0	0	0	0	0	0	0	0	0
Computer reservation system	1	0	0	0	0	1	0	0	0	0	0.2
B. Restrictions on cross-border trade (mode 1)											
3 Are there restrictions on cross-border supply by foreign service providers in non-scheduled (charter) market?											
International air passenger (non-scheduled charter services)	0	0	1	0	0	0	1	0	1	0	0.3
Domestic air transport (non-scheduled charter services)	na	0	1	0	1	0	1	na	0	0	0.4
5 Has the country ratified the ASEAN Multilateral Agreement on Air Services?	1	1	1	1	1	1	1	0	0	1	0.8
C. Restrictions on the movt of intra-corporate transferees of foreign-invested companies (mode 4)											
7 Are there residency or nationality requirements or quotas for personnel employed by locally established foreign airline companies?	1	1	1	1	1	0	1	0	1	1	0.8
8 Are there categories of intra-corporate transferees whose entry and stay is subject to labour market tests?	1	0	1	0	1	1	0	0	0	0	0.4
D. Ownership											
9 Is private ownership in the provision of services through commercial establishment allowed?											
Existing operators											
International air passenger transport (scheduled services)	0.8	0.8	0.8	0.8	0.8	0	0	0	0	1	0.5
International air passenger (non-scheduled charter services)	0.8	0.8	0.8	0.8	0.8	0	0	0	0	1	0.5
International air freight (all-cargo carriers, express delivery)	0.8	0.8	0.8	0.8	0.8	0	0	0	0	1	0.5
Domestic air transport (scheduled services)	na	0.8	0.8	1	0.8	0	0	0	0	0.8	0.4
Domestic air transport (non-scheduled charter services)	na	0.8	0.8	1	1	0	0	0	0	0.8	0.5
Domestic air freight (all-cargo carriers, express delivery)	na	0.8	0.8	1	1	0	0	0	0	0.8	0.5
Provision of fuel	0.5	0.8	0.8	0.8	0.8	1	0	0	0	1	0.6
Luggage and freight loading and unloading	0.8	0.8	0.8	0.8	0.8	0	0	0	0	0.8	0.5
Aircraft repair and maintenance	0.8	0.8	0.8	0.8	0.8	0	0	0	0	1	0.5

Annex 1 (Continued): Restrictions on Trade in Air Transport Services (Index 0-1)

	Brunei	*Cambodia*	*Indonesia*	*Lao PDR*	*Malaysia*	*Myanmar*	*Philippines*	*Singapore*	*Thailand*	*Vietnam*	*Average*
Selling and marketing of air transport services	0.8	0.8	0.8	0	0.8	0	0	0	0	0.8	0.4
Computer reservation system	0.8	0.8	0.8	0	0.8	1	0	0	0	0.8	0.5
New entrants											
International air passenger transport (scheduled services)	0.8	0.8	0	0.8	0.8	0	0	0	0	0.8	0.4
International air passenger (non-scheduled charter services)	0.8	0.8	0	0.8	0.8	0	0	0	0	0.8	0.4
International air freight (all-cargo carriers, express delivery)	0.8	0.8	0	0.8	0.8	0	0	0	0	0.8	0.4
Domestic air transport (scheduled services)	na	0.8	0	1	0.8	0	0	0	0	0.8	0.4
Domestic air transport (non-scheduled charter services)	na	0.8	0	1	1	0	0	0	0	0.8	0.4
Domestic air freight (all-cargo carriers, express delivery)	na	0.8	0	1	1	0	0	0	0	0.8	0.4
Provision of fuel	0.5	0.8	0	0.8	0.8	1	0	0	0	0.8	0.5
Luggage and freight loading and unloading	0.8	0.8	0	0.8	0.8	0	0	0	0	0.8	0.4
Aircraft repair and maintenance	0.8	0.8	0	0.8	0.8	0	0	0	0	0.8	0.4
Selling and marketing of air transport services	0.8	0.8	0	0	0.8	0	0	0	0	0.8	0.3
Computer reservation system	0.8	0.8	0	0	0.8	1	0	0	0	0.8	0.4
10 Is foreign ownership in the provision of services through commercial											
Existing operators											
International air passenger transport (scheduled services)	0.8	0.8	0.5	0.8	0.6	0.5	0.6	0	0.5	0.8	0.6
International air passenger (non-scheduled charter services)	0.8	0.8	0.5	0.8	0.5	0.5	0.6	0	0.5	0.8	0.6
International air freight (all-cargo carriers, express delivery)	0.8	0.8	0.5	0.8	0.5	0.5	0.6	0	0.5	0.8	0.6
Domestic air transport (scheduled services)	na	0.8	0.5	1	0.5	0.5	0.6	na	0.5	1	0.7
Domestic air transport (non-scheduled charter services)	na	0.8	0.5	1	1	0.5	0.6	na	0.5	1	0.7
Domestic air freight (all-cargo carriers, express delivery)	na	0.8	0.5	1	1	0.5	0.6	na	0.5	1	0.7
Provision of fuel	0.5	0.8	0.5	0.5	0.5	1	0.6	0	0.5	1	0.6
Luggage and freight loading and unloading	0.8	0.8	0.5	0.5	1	1	0.6	0	0.5	0.8	0.6
Aircraft repair and maintenance	0.8	0.8	0.5	0.8	0.5	0.8	0.6	0	0.5	0.5	0.6
Selling and marketing of air transport services	0.8	0.8	0.5	0	0.5	0.8	0	0	0.5	0.8	0.5
Computer reservation system	0.8	0.8	0.5	0	0.5	1	0	0	0.5	0.8	0.5
New entrants											
International air passenger transport (scheduled services)	0.8	0.8	0.5	0.8	0.6	0.5	0.6	0	0.5	0.8	0.6
International air passenger (non-scheduled charter services)	0.8	0.8	0.5	0.8	0.5	0.5	0.6	0	0.5	0.8	0.6
International air freight (all-cargo carriers, express delivery)	0.8	0.8	0.5	0.8	0.5	0.5	0.6	0	0.5	0.8	0.6
Domestic air transport (scheduled services)	na	0.8	0.5	1	0.5	0.5	0.6	na	0.5	1	0.7
Domestic air transport (non-scheduled charter services)	na	0.8	0.5	1	1	0.5	0.6	na	0.5	1	0.7
Domestic air freight (all-cargo carriers, express delivery)	na	0.8	0.5	1	1	0.5	0.6	na	0.5	1	0.7
Provision of fuel	0.5	0.8	0.5	0.5	0.5	1	0.6	0	0.5	1	0.6
Luggage and freight loading and unloading	0.8	0.8	0.5	0.5	1	1	0.6	0	0.5	0.8	0.6
Aircraft repair and maintenance	0.8	0.8	0.5	0.8	0.5	0.8	0.6	0	0.5	0.5	0.6
Selling and marketing of air transport services	0.8	0.8	0.5	0	0.5	0.8	0	0	0.5	0.8	0.5
Computer reservation system	0.8	0.8	0.5	0	0.5	1	0	0	0.5	0.8	0.5
11 Does the government have a special government voting right in the	1	0	0	1	1	0	0	0	0	0	0.3
12 Ownership structure for up to the 5 most important international airports	1	0.7	1	1	0.5	1	1	0.8	0	1	0.8
E. Regulation											
14 How are flight slots allocated in airports?	1	0	1	0.5	1	1	1	0.5	1	0.5	0.8
15 How are gate slots allocated in airports?	0.5	0	1	0.5	1	1	1	0.5	1	0.5	0.7
17 Price regulation											
a. Does the govt regulate airfares? - on domestic routes	na	1	0	1	0	0	1	na	1	1	0.6
- on international routes	0	1	0	0	0	0	1	0	1	0	0.3
If yes to a), is fare discounting allowed? - on domestic routes	0	0	0	0	0	0	0	na	0	0	0
- on international routes	0	0	0	0	0	0	0	0	0	0	0

Annex 1 (Continued): Restrictions on Trade in Air Transport Services (Index 0-1)

	Brunei	*Cambodia*	*Indonesia*	*Lao PDR*	*Malaysia*	*Myanmar*	*Philippines*	*Singapore*	*Thailand*	*Vietnam*	*Average*
19 Do the licence conditions for foreign-invested providers who establish locally differ from those above?											
International air passenger transport (scheduled services)	0	0	0	0	0	0	0	0	0	1	0.1
International air passenger (non-scheduled charter services)	0	0	0	0	0	0	0	0	0	1	0.1
International air freight (all-cargo carriers, express delivery)	0	0	0	0	0	0	0	0	0	1	0.1
Domestic air transport (scheduled services)	na	0	0	0	0	0	0	na	0	1	0.1
Domestic air transport (non-scheduled charter services)	na	0	0	1	0	0	0	na	0	1	0.3
Domestic air freight (all-cargo carriers, express delivery)	na	0	0	1	0	0	0	na	0	1	0.3
Provision of fuel	1	1	na	0	0	1	0	0	0	1	0.4
Luggage and freight loading and unloading	0	0	0	0	0	1	0	0	0	1	0.2
Aircraft repair and maintenance	0	0	0	0	0	1	0	0	0	1	0.2
Selling and marketing of air transport services	0	0	0	0	0	1	0	0	0	1	0.2
Computer reservation system	0	0	0	0	0	1	0	0	0	1	0.2
20 Does the government subsidize domestic airlines?	1	0	1	1	1	0	0	0	0	0	0.4
21 Has the government covered operational losses of airlines in the past ten years	1	0	1	1	0	0	0	0	0	0	0.3

Source: Dee (2009, pp. 42-44).

Annex 2. Sector-Specific Restrictions: Abolition and Retention

Sectors	Common restrictions?	Restrictive impact on cross-border services*	Abolished?, less stringent, simplified	Barriers maintained	
				Main types	Frequency
1. Wholesale/ retail					
1.1 *Establishment*					
a. Authorisation	Quite a few MS	B / C / D	Selectively, yes	a. For the 'size' of super/hypermarket b. Distribution of sensitive products	Quite a few M S
b. Quantitative restrictions	A few	B	Mostly, yes	some location & legal form requirements	Very few
1.2 *Cross-border*					
a. Authorisation	Quite a few	B /C / D	Selectively, yes	Alcoholic drinks sales, tobacco, trade in animals	A few
b. Establishment requirements	Very few	D	Removed (except one)		One
c. Notifications	A few	A / B	Not reported	Sale of butane gas bottles, e.g.	A few
d. Other	A few	B	Abolished	---	---
1.3 *Ambulant sales*	Many	A / B / C	Selectively, yes	a. Outdoor markets authorisations b. Quantitative & territorial restrictions c. Cross-border restrictions	Quite a few A few A few
2. Tourism					
2.1 *Travel agents*					
Establishment					
a. Authorisatios	19 MS	B, C, D	Not reported	Agents, managers, or tour operators	19 MS
b. Notifications	8 MS	A, B			
c. Quantitative, territorial + legal form requirements	A few	B, C	Almost all abolished		
Cross-border					
a. Authorisations	A few	B, C	Selectively, yes		
b. Notifications	A few	A, B			
c. Insurance	A few	A, B			
2.2 *Tourist guides*					
[regulated profession]	10 MS	C, D		Mountain guides, cave guides, ski instructors	

Establishment					
a. Authorisations	8 MS	B, C, D	Not reported		
b. Quantitative restrictions, ban on second establishment, legal form		B, C, D	Largely abolished	A few (arbitrary?) restrictions left	Very few
Cross-border					
a. Authorisations	2 MS	B, C, D		E.g. diving services	Very few
b. Other	Several	A	Almost all abolished	E.g. special ID cards	2 MS
2.3 *Tourist accommodation*					
Establishment					
a. Authorisation	19 MS	B, C, D	Minor shift to declarations	For inspection on SHE and quality	Many
b. Quantitative & legal form	A few	B	Mostly abolished		
2.4 Car rental					
a. Authorisation	5 MS	B, D	(Other restrictions abolished)	1 MS with bank guarantee	
2.5 *Food & beverages*					
Establishment					
a. Authorisation	Many	B, C, D	A few abolitions		
b. Quantitative restrictions	Several	B	Selectively	E.g. no pubs close to schools, rules for terraces	
Cross-border					
a. Authorisation	Several	B, D	A few abolitions	E.g. catering	A few
b. Other (insurance)	A few	C		[Such cross-border insurance may be hard to obtain or very costly]	
3. Construction [2 methods : some MS focus on building permits and results, with strict inspections; most MS also regulate heavily ex ante, professions/companies, with fewer checks]					

Establishment					
a. Authorisation					
construction in general	Quite a few	B, C, D	Selectively, yes	Architects, supervisors, crafts	Many
Specific activities	Many	B, C, D	Not reported	Elevator technicians, certification services	Many
Specific situations	Many	B, C, D	Not reported	Very diverse; ground water, excavations, natural monuments, asbestos, gas eq.t, very large scale	
b. Fixed tariffs	10 MS	B	Not reported	E.g. architects & inspection services	
c. Legal form	Quite a few	B, C	Selectively	Very diverse	
d. Shareholding	11 MS	C	Selectively	Often architects	
e. Minimum no. of employees	5 MS	B	Not reported		
f. Restrictions on multidisciplinary activities	Many	B, C	Not reported	For architects; highly diverse for others	Many
Cross-border					
a. Authorisations	Most MS	B, C, D	Selectively	Highly diverse, but often similar to those under 'establishment'	Many
b. Notifications	A few	A			
c. Insurance	Quite a few	B, D	Not reported	[Insurance for this cross-border activity can be expensive]	
4. Real estate					
Establishment					
a. Authorisation					
Real estate	8 MS	B, C, D	Not reported	Real estate agents are also regulated profession	12 MS regulated profession
Land surveyors	6 MS	B, C, D	Not reported	Land surveyors also regulated profession	8 MS regulated profession
b. Legal form	A few	B, C	Selectively	Land surveyors	A few
c. Shareholding	7 MS	C	Selectively	Land surveyors	
d. Fixed tariffs	5 MS	B	Not reported	Highly diverse; minimum, maximum, fixed	A few
e. No multi-disciplinary activity	8 MS	B, C	Selectively	Various ways	
Cross-border					
a. Authorisation	A few	B, C, D	Selectively	Land surveyors, e.g. asbestos testing	
b. Notification	1 MS	A			
c. Insurance or financial guarantee	4 MS	B, D	Not reported		

5. Business services [For definition, see note]					
5.1 *Employment agencies*					
Establishment					
a. Authorisation	17 MS	B, C, D	A few abolitions, simplifications	a. Checking 'good repute' b. Employment agents a regulated profession c. Licenses for services to athletes, models, artists	Many 4 MS 2 MS
b. Legal form	4 MS	B, C	Not reported		
c. Tariffs	3 MS	B	abolition (1)	Maximum, fixed	
d. Ban on multidisciplinary activities	A few	B, C	Not reported		
Cross-border					
a. Authorisation	A few	B, C, D	Selectively	Good repute, against illegal work, human trafficking	
b. Notifications	A few	A	Selectively	May refer to disclosure duties, ceilings of fees	
5.2 Advertising [Agencies or agents lightly regulated; modes of advertising or forms/spaces can be restricted]					
a. Authorisation	Many	B, C, D	Not reported	Use of historical buildings, public space, aerial, parking advert vehicles	
b. Other restrictions S	Several	B (mutual recognition may apply crossborder	Not reported	Certain forms or subjects of advertising	
5.3 Trade fairs, exhibitions					
Authorisation (often local)	10 MS	B, C, D	Selectively, lighter	a. For exhibitions in general (premises) b. Certain specific fairs (books, firearms, animal fairs)	10 MS 4 MS

5.4 Debt collection services a. Authorisation	9 MS	B, C, D	Not reported	a. Debt collectors regulated profession b. Or, must be lawyers	
b. Other	Several	B, C		'Other' comprises legal form, max. tariff, insurance (for cross-border)	
5.5 Tax advisors Establishment a. Authorisation	6 MS (see also column 5)	B, C, D	Not reported	a. Tax advisors regulated profession b. Or, tax advisors reserved for other professions	10 MS Many
b. Other [Cross-border no barriers, but regulated professions here linked with local tax knowledge]	Several	B, C	Selectively	Legal form and shareholding requirements [for independence, reliability, solvency, skills]	
5.6 Insolvency practitioners Establishment a. Authorisation	8 MS	B, C, D	Not reported	Regulated profession	5 MS
b. Other [Almost none, cross-border]	Several	B, C	Not reported	Legal form, shareholding, tariffs, minimum no. of employees. Multi-disciplinary activities	Several
5.7 Patent and trademark agents Establishment a. Authorisation	12 MS	B, C, D	None	Regulated profession, or, assigned to lawyers	16 MS Several
b. Other	Several	B, C	Not reported	Shareholding. minimum no. of employees, multi-disciplinary activities Registration,	A few

Cross-border	Several	A, C	Not reported	notification, insurance, postal address, special ID card	
5.8 Translators and interpreters					
Establishment					
a. Authorisation	10 MS	B, C, D	None	Regulated profession	7 MS
b. Other	A few	B, C		Fixed fees	5 MS
Cross-border					
a. Authorisation	4 MS	B, C, D	One	One MS, insurance, too	
6. Private education					
6.1 Higher education					
Establishment					
a. Authorisation	17 MS + 2 MS with accreditation	B, C, D		May apply to selected services only, different between MS	
b. Other	Several	B, C		Legal form, no-more-than one branch, staff – student ratio	8 MS Several
Cross-border					
a. Authorisation	3 MS	B, C, D		Validation and/or franchising must occur between recognised educational institutions	
b. Other	A few	A			
c. Establishment	3 MS	D		(Against case law)	
6.2 Vocational					
Establishment					
a. Authorisation	22 MS	B, C, D	Simplification, many MS	a. General vocational b. Numerous specific authorisations or accreditation (e.g. technical staff, health staff, additional training for lawyers, veterinarians and teachers, transport staff, safety specialists, environmental specialists, cave guides, aviation staff, sport	9 MS Many MS but each one distinctly w. r. t. different skills or staff

				staff, etc.)	
b. Other	Several	B, C	One abolition	Legal form, quantitative, minimum no. of employees	
<u>Cross-border</u> Authorisation	10 MS	B, C, D	Selected shifts to notifications	Very diverse subjects of training/courses	
6.3 Adult education (including arts, languages, dancing) <u>Establishment</u> a. Authorisation	9 MS	B, C, D	Not reported	a. Broad authorisation b. Only for dramatic arts, dancing, languages	5 MS 8 MS (overlaps with a.)
b. Other	A few	B, C	Not reported	Ban on more than one, territorial, legal form	
<u>Cross-border</u>	A few	A, B, D	Not reported	Authorisation, declaration, + establishment	Establish-ment illegal?
6.4 Driving courses <u>Establishment</u> a. Authorisation instructors schools	24 MS 21 MS	B, C, D B, C, D	None None	a. Driving instruction regulated profession b. Managers of driving schools regulated profession c. Separate for professional driving (taxi, bus, trucks) and persons	17 MS 4 MS Most MS
b. Other	A few	B, C	Selectively	Territorial, legal form, maximum tariff	
<u>Cross-border</u> Authorisations	Many	B, C, D	Not reported		

* The 'restrictive impact' column should be read as follows: A = light, B = more than a nuisance, C = restrictive, anti-competitive, D = severe hindrance. MS = member state(s).

Note: For explanation, see text. Section 5 in the table is "business services". For present purposes, these are defined as all the categories in items 5.1–5.8; this excludes accountants and lawyers (insofar as they are not covered by specialisations under 5.1–5.8) because the Commission source (2011b) notes that the restrictions applicable to them fall under the so-called Art. 15 restrictions legal form, shareholding requirements and limits on multi-disciplinary activities – see items 3, 4 and 9 in Table 8.

Source: European Commission (2011b).

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CENTRE FOR EUROPEAN POLICY STUDIES, Place du Congrès 1, B-1000 Brussels, Belgium
Tel: 32 (0)2 229 39 11 • Fax: 32 (0)2 219 41 51 • www.ceps.eu • VAT: BE 0424.123.986